



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXVII

October 13, 2004

NUMBER 8

Pages 509 to 572

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

| | | |
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| | |
|-----------------------------------|-------|
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Prices for the Iowa Administrative Code and its Supplements are as follows:

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Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

| | |
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| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1(249A) | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)“a” | (Paragraph) |
| 441 IAC 79.1(1)“a”(1) | (Subparagraph) |

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2004

| NOTICE SUBMISSION DEADLINE | NOTICE PUB. DATE | HEARING OR COMMENTS 20 DAYS | FIRST POSSIBLE ADOPTION DATE 35 DAYS | ADOPTED FILING DEADLINE | ADOPTED PUB. DATE | FIRST POSSIBLE EFFECTIVE DATE | POSSIBLE EXPIRATION OF NOTICE 180 DAYS |
|----------------------------------|------------------------|--------------------------------------|--|-------------------------------|-------------------------|--|---|
| Jan. 2 '04 | Jan. 21 '04 | Feb. 10 '04 | Feb. 25 '04 | Feb. 27 '04 | Mar. 17 '04 | Apr. 21 '04 | July 19 '04 |
| Jan. 16 | Feb. 4 | Feb. 24 | Mar. 10 | Mar. 12 | Mar. 31 | May 5 | Aug. 2 |
| Jan. 30 | Feb. 18 | Mar. 9 | Mar. 24 | Mar. 26 | Apr. 14 | May 19 | Aug. 16 |
| Feb. 13 | Mar. 3 | Mar. 23 | Apr. 7 | Apr. 9 | Apr. 28 | June 2 | Aug. 30 |
| Feb. 27 | Mar. 17 | Apr. 6 | Apr. 21 | Apr. 23 | May 12 | June 16 | Sept. 13 |
| Mar. 12 | Mar. 31 | Apr. 20 | May 5 | May 7 | May 26 | June 30 | Sept. 27 |
| Mar. 26 | Apr. 14 | May 4 | May 19 | May 21 | June 9 | July 14 | Oct. 11 |
| Apr. 9 | Apr. 28 | May 18 | June 2 | June 4 | June 23 | July 28 | Oct. 25 |
| Apr. 23 | May 12 | June 1 | June 16 | June 18 | July 7 | Aug. 11 | Nov. 8 |
| May 7 | May 26 | June 15 | June 30 | July 2 | July 21 | Aug. 25 | Nov. 22 |
| May 21 | June 9 | June 29 | July 14 | July 16 | Aug. 4 | Sept. 8 | Dec. 6 |
| June 4 | June 23 | July 13 | July 28 | July 30 | Aug. 18 | Sept. 22 | Dec. 20 |
| June 18 | July 7 | July 27 | Aug. 11 | Aug. 13 | Sept. 1 | Oct. 6 | Jan. 3 '05 |
| July 2 | July 21 | Aug. 10 | Aug. 25 | Aug. 27 | Sept. 15 | Oct. 20 | Jan. 17 '05 |
| July 16 | Aug. 4 | Aug. 24 | Sept. 8 | Sept. 10 | Sept. 29 | Nov. 3 | Jan. 31 '05 |
| July 30 | Aug. 18 | Sept. 7 | Sept. 22 | Sept. 24 | Oct. 13 | Nov. 17 | Feb. 14 '05 |
| Aug. 13 | Sept. 1 | Sept. 21 | Oct. 6 | Oct. 8 | Oct. 27 | Dec. 1 | Feb. 28 '05 |
| Aug. 27 | Sept. 15 | Oct. 5 | Oct. 20 | Oct. 22 | Nov. 10 | Dec. 15 | Mar. 14 '05 |
| Sept. 10 | Sept. 29 | Oct. 19 | Nov. 3 | Nov. 5 | Nov. 24 | Dec. 29 | Mar. 28 '05 |
| Sept. 24 | Oct. 13 | Nov. 2 | Nov. 17 | ***Nov. 17*** | Dec. 8 | Jan. 12 '05 | Apr. 11 '05 |
| Oct. 8 | Oct. 27 | Nov. 16 | Dec. 1 | Dec. 3 | Dec. 22 | Jan. 26 '05 | Apr. 25 '05 |
| Oct. 22 | Nov. 10 | Nov. 30 | Dec. 15 | ***Dec. 15*** | Jan. 5 '05 | Feb. 9 '05 | May 9 '05 |
| Nov. 5 | Nov. 24 | Dec. 14 | Dec. 29 | Dec. 31 | Jan. 19 '05 | Feb. 23 '05 | May 23 '05 |
| ***Nov. 17*** | Dec. 8 | Dec. 28 | Jan. 12 '05 | Jan. 14 '05 | Feb. 2 '05 | Mar. 9 '05 | June 6 '05 |
| Dec. 3 | Dec. 22 | Jan. 11 '05 | Jan. 26 '05 | Jan. 28 '05 | Feb. 16 '05 | Mar. 23 '05 | June 20 '05 |
| ***Dec. 15*** | Jan. 5 '05 | Jan. 25 '05 | Feb. 9 '05 | Feb. 11 '05 | Mar. 2 '05 | Apr. 6 '05 | July 4 '05 |
| Dec. 31 | Jan. 19 '05 | Feb. 8 '05 | Feb. 23 '05 | Feb. 25 '05 | Mar. 16 '05 | Apr. 20 '05 | July 18 '05 |

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER

SUBMISSION DEADLINE

ISSUE DATE

10

Friday, October 22, 2004

November 10, 2004

11

Friday, November 5, 2004

November 24, 2004

12

Wednesday, November 17, 2004

December 8, 2004

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

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To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

| AGENCY | HEARING LOCATION | DATE AND TIME OF HEARING |
|--------|------------------|--------------------------|
|--------|------------------|--------------------------|

ATTORNEY GENERAL[61]

| | | |
|---|--|-----------------------------|
| Victim services grant program, 9.50 to 9.65 IAB 10/13/04 ARC 3725B | Division Conference Room Ground Floor Lucas State Office Bldg. Des Moines, Iowa | November 2, 2004 10 a.m. |
|---|--|-----------------------------|

CORRECTIONS DEPARTMENT[201]

| | | |
|--|---|---------------------------------------|
| Community-based corrections administration, 40.1, 40.4, 40.5 IAB 10/13/04 ARC 3726B | Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa | November 2, 2004 11 a.m. to 1 p.m. |
|--|---|---------------------------------------|

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

| | | |
|--|---|-------------------------------|
| Special provisions for the American Dream Downpayment Initiative, 25.4(4) IAB 10/13/04 ARC 3730B | First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa | November 2, 2004 1:30 p.m. |
|--|---|-------------------------------|

EDUCATIONAL EXAMINERS BOARD[282]

| | | |
|---|---|----------------------------|
| Renewal of licenses, 17.2, 17.4 to 17.9, 17.11, 17.12 IAB 10/13/04 ARC 3734B | Room 2 Southwest, Second Floor Grimes State Office Bldg. Des Moines, Iowa | November 2, 2004 1 p.m. |
|---|---|----------------------------|

EDUCATION DEPARTMENT[281]

| | | |
|--|---|----------------------------|
| School transportation, amendments to ch 43 IAB 10/13/04 ARC 3711B | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | November 2, 2004 1 p.m. |
|--|---|----------------------------|

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| | | |
|--|---|-----------------------------|
| Assisted living programs—provider/ housing partnerships, 25.1 to 25.45 IAB 9/29/04 ARC 3705B (ICN Network) | Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa | October 19, 2004 10 a.m. |
| | Room 115, Industrial Technologies Bldg. Northeast Iowa Community College 1625 Hwy 150 South Calmar, Iowa | October 19, 2004 10 a.m. |
| | Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa | October 19, 2004 10 a.m. |
| | Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 19, 2004 10 a.m. |

ELDER AFFAIRS DEPARTMENT[321] (Cont'd)
(ICN Network)

| | | |
|--|---|-----------------------------|
| | Room 107, North Hall University of Iowa End of N. Madison St. Iowa City, Iowa | October 19, 2004 10 a.m. |
| | National Guard Armory 11 E. 23rd St. Spencer, Iowa | October 19, 2004 10 a.m. |
| Assisted living programs— technical changes to rules, 25.1, 25.2, 25.22(3), 25.29(1) IAB 9/29/04 ARC 3703B (ICN Network) | Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa | October 19, 2004 10 a.m. |
| | Room 115, Industrial Technologies Bldg. Northeast Iowa Community College 1625 Hwy 150 South Calmar, Iowa | October 19, 2004 10 a.m. |
| | Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa | October 19, 2004 10 a.m. |
| | Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 19, 2004 10 a.m. |
| | Room 107, North Hall University of Iowa End of N. Madison St. Iowa City, Iowa | October 19, 2004 10 a.m. |
| | National Guard Armory 11 E. 23rd St. Spencer, Iowa | October 19, 2004 10 a.m. |

ENVIRONMENTAL PROTECTION COMMISSION[567]

| | | |
|---|---|-------------------------------|
| Concentrated animal feeding operations (CAFOs); NPDES permitting, 60.2, 60.3(2), 63.5, 64.3(1), 65.1 to 65.7, 65.22 IAB 10/13/04 ARC 3736B | Cass County Community Center 805 W. Tenth St. Atlantic, Iowa | November 2, 2004 9 a.m. |
| | Plymouth County Extension 24 First St. NW Le Mars, Iowa | November 2, 2004 6:30 p.m. |
| | Marr Park 2943 Hwy 92 Ainsworth, Iowa | November 4, 2004 6:30 p.m. |
| | Parks and Recreation Offices 200 First St. NE Waverly, Iowa | November 5, 2004 8:30 a.m. |
| | Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | November 5, 2004 1:30 p.m. |

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

| | | |
|---|--|-------------------------------|
| Animal feeding operations— construction permits, use of master matrix, 65.1, 65.7, 65.9, 65.10, 65.15 IAB 10/13/04 ARC 3735B | Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa | November 8, 2004 8:30 a.m. |
|---|--|-------------------------------|

**HOMELAND SECURITY AND
EMERGENCY MANAGEMENT DIVISION[605]**

| | | |
|---|--|----------------------------|
| Iowa hazard mitigation plan and disaster recovery plan, 9.1 to 9.4 IAB 9/29/04 ARC 3697B (See also ARC 3698B) | Division Conference Room, Level A Hoover State Office Bldg. Des Moines, Iowa | October 19, 2004 9 a.m. |
|---|--|----------------------------|

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| | | |
|--|--|-------------------------------|
| Administrative and regulatory authority, 1.2, 1.3, 1.10 IAB 9/29/04 ARC 3689B | Suite C 400 SW Eighth St. Des Moines, Iowa | October 19, 2004 3:15 p.m. |
| Iowa physician health program open to applicants for licensure and licensees, 14.2, 14.3, 14.6, 14.7, 14.9, 14.11, 17.1 IAB 9/29/04 ARC 3690B | Suite C 400 SW Eighth St. Des Moines, Iowa | October 19, 2004 3 p.m. |

NATURAL RESOURCE COMMISSION[571]

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| Lands and waters conservation fund program, 27.4 to 27.7, 27.11, 27.13 IAB 9/29/04 ARC 3706B | Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 19, 2004 1 p.m. |
| State parks and recreation areas, 61.2, 61.3(5), 61.4(1) IAB 9/29/04 ARC 3708B | Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 19, 2004 1 p.m. |
| Use of metal detectors in state areas, 64.1 to 64.9 IAB 9/29/04 ARC 3707B | Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 20, 2004 10 a.m. |
| Fish stocking procedures and fees for private waters, ch 79 IAB 9/29/04 ARC 3709B | Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 22, 2004 1 p.m. |

PUBLIC SAFETY DEPARTMENT[661]

| | | |
|---|---|-------------------------------|
| Fire safety standards—facilities in which foster care is provided, 5.615 IAB 9/29/04 ARC 3684B | Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 21, 2004 9:30 a.m. |
| Sex offender registry, 8.301 to 8.305, adopt ch 83 IAB 9/29/04 ARC 3686B | Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 21, 2004 10 a.m. |

**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION, IOWA[751]**

| | | |
|---|--|----------------------------|
| General, amendments to chs 1, 2, 5 to 8, 13, 14, 18 IAB 10/13/04 ARC 3713B | Thompson Conference Room Building W-4, Camp Dodge Johnston, Iowa | November 2, 2004 1 p.m. |
|---|--|----------------------------|

TRANSPORTATION DEPARTMENT[761]

| | | |
|--|--|---|
| Interstate registration and operation of vehicles, 500.1, 500.4, 500.10 to 500.25 IAB 10/13/04 ARC 3712B | DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa | November 4, 2004 10 a.m. (If requested) |
|--|--|---|

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

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ARC 3725B

ATTORNEY GENERAL[61]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 915.83, the Iowa Attorney General’s Office, Crime Victim Assistance Division, hereby gives Notice of Intended Action to amend Chapter 9, “Victim Assistance Program,” Iowa Administrative Code.

The proposed amendment, which replaces existing Division III with a new Division III, corrects the official address of the Crime Victim Assistance Division and establishes definitions, methods, considerations, and processes for the distribution of federal and state grant funds administered by the Victim Services Grant Program of the Crime Victim Assistance Division.

Any interested person may make written suggestions or comments on the proposed rules on or before November 2, 2004. Such written material should be directed to the Crime Victim Assistance Division, Lucas State Office Building, Des Moines, Iowa 50319; fax (515)281-8199. Persons who wish to convey their views orally should contact the Crime Victim Assistance Division at (515)281-5044 or at the Division offices on the ground floor of the Lucas State Office Building.

Also, there will be a public hearing on November 2, 2004, at 10 a.m. in the Conference Room, Crime Victim Assistance Division, Ground Floor, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules are intended to implement Iowa Code section 13.31.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind rules 61—9.50(13) to 61—9.65(13) and adopt the following **new** rules in lieu thereof:

DIVISION III

VICTIM SERVICES GRANT PROGRAM

61—9.50(13) Administration of the victim services grant program. The victim services grant program of the Iowa department of justice shall administer the victim services grants as provided in Iowa Code chapters 13 and 236. All questions, comments, requests for information, or applications for grant funds shall be directed to the victim services grant program. Requests should be addressed to: Crime Victim Assistance Division, Iowa Department of Justice, 321 East 12th Street, Lucas State Office Building, Ground Floor, Des Moines, Iowa 50319, telephone (515)281-5044.

61—9.51(13) Definitions. As used in this chapter:

“Applicant” means a public or private nonprofit program that provides direct services to crime victims or training and technical assistance to crime victim service providers and that makes a request for funds from the victim services grant program.

“Application” means a request which complies with federal and state requirements for funds from the following funding streams:

1. The federal Victims of Crime Act.
2. The state domestic and sexual abuse program funds provided for in Iowa Code chapter 236.
3. The federal Family Violence Prevention and Services Act.
4. The federal Violence Against Women Act.
5. Other grants or funds available by law for crime victim assistance.

“Board” means the crime victim assistance board.

“Competitive grant” means a grant for which the division solicits a request for proposals (RFP) from eligible applicants, reviews the applications for eligibility and completeness, and then convenes a grant review committee to recommend grant awards to the crime victim assistance board.

“Crime victim center” means a crime victim center as defined in Iowa Code section 915.20A(1).

“Department” means the Iowa department of justice.

“Director” means director of the crime victim assistance division of the Iowa department of justice.

“Division” means the crime victim assistance division of the Iowa department of justice.

“Focus grant” means a one-time grant for specific activities, including but not limited to training, travel, or materials, awarded at the discretion of the division directly to a program that has received a competitive grant in the fiscal year.

“Funding stream” means a distinct source of federal or state funding available for grants.

“Grant” means a competitive or focus grant award to a local or statewide government or private nonprofit agency.

“Grantee” means a local or statewide government or private nonprofit agency that is awarded or receives funds from the crime victim assistance division.

“Grant review committee” means a division of justice committee designated to review grant applications.

“Justice support” means duties performed in the justice system related to investigation, prosecution, or disposition of a criminal case that assist or inform a victim of crime.

“Program” means the victim services grant program of the Iowa department of justice.

“RFP” means request for proposals.

“Victim” means a crime victim as defined in Iowa Code section 915.80.

61—9.52(13) Program description. Any eligible local or statewide government or private nonprofit agency or a combination thereof may apply for and receive a grant through the program. The program shall operate as a competitive and focus grants program and be administered by the department. A contractual agreement specifying the terms of the grant award shall be executed between the department and the approved applicant.

61—9.53(13) Availability of grants. In any year in which federal or state funds are available, the division shall administer grants with eligible applicants. The amount of the funds awarded shall be contingent upon the funds available. The director shall announce the opening of an application period through public notice including but not limited to notice to current grantees and other eligible agencies identified by the

ATTORNEY GENERAL[61](cont'd)

program. Applications must be received by the designated due date.

9.53(1) Competitive grants will be awarded based on the availability of funds, history and demonstration of quality of services provided, compliance with the requirements of the division, number of victims served or cases investigated and prosecuted, population served, and geographical distribution of funds in the state. A preference shall be given to continued funding of successful grantees.

9.53(2) Focus grants will be awarded at the discretion of the director and of the deputy attorney general who oversees the division. Funds utilized for focus grants must comply with all applicable state and federal rules and regulations. The total of focus grants from one funding source may not exceed 3 percent of the funds available from the funding source in one state fiscal year.

61—9.54(13) Application requirements. Applicants shall submit applications to: Crime Victim Assistance Division, Iowa Department of Justice, 321 East 12th Street, Lucas State Office Building, Ground Floor, Des Moines, Iowa 50319. Applications shall be in the form prescribed by the division and shall be available upon request to all interested parties.

9.54(1) To be included in the review process and considered for funding, an application shall be received in the offices of the division by 4:30 p.m. on the due date. Applications may be delivered to the division during regular business hours anytime prior to the deadline. An extension of the filing deadline may be requested of the director or grant administrator prior to the deadline and may be granted for good cause. The determination of a good cause extension by the division director shall be final.

9.54(2) An applicant shall have on file with the division current copies of the applicant's table of organization and articles of incorporation as required.

9.54(3) An applicant shall have on file with the division evidence of any insurance coverage the applicant carries for liability or property.

9.54(4) The division may allow combined applications from two or more agencies if a combined application will encourage cooperation between those agencies on behalf of crime victims. Each agency receiving funds under a combined application shall sign a grant contract for the use of awarded funds.

61—9.55(13) Contents of application. Each application shall contain the following information:

9.55(1) A paragraph describing the agencies or units of government requesting the funds.

9.55(2) A description of services for which funding is being requested. The description shall include, but not be limited to, the following:

- a. The geographical area to be served.
- b. The crime victim population to be served.
- c. Victim eligibility requirements for the applicant's services.
- d. A description of substantial financial support from other sources.
- e. The intended use of volunteers, if any.
- f. The stated goals and objectives of the program.
- g. A description of the proposed victim service, training, or technical assistance to be implemented during the funding year.
- h. The amount of grant funds requested.
- i. The amount of cash or in-kind resources or combination thereof which is committed where required by the division.

j. A description of how the proposed victim service, training, or technical assistance will provide or improve services to victims of crime.

k. Proof of coordination with appropriate agencies at the local level.

l. A total program budget for all services provided by the applicant's crime victim program.

m. A proposed budget for the requested grant funds.

n. A list of other anticipated sources of income, including written commitments, if possible, and plans for continued funding of the grant-funded activities.

o. Other information identified in the RFP.

p. Signed certified assurances as required by statute or regulation.

61—9.56(13) Eligibility requirements. Funds must be used only to provide victim services, or justice support to victims of crime, and training or technical assistance to victim service providers and allied professionals. Program grants shall not be used to supplant other available or mandated funds. An applicant must meet the following requirements:

9.56(1) The applicant shall be a public agency or private nonprofit organization, or combination thereof, that provides services to crime victims or training and technical assistance to victim service providers and allied professionals.

9.56(2) The applicant shall provide services to victims of crime through crime victim centers, law enforcement officers, prosecutors, and other allied professionals. Services provided to victims by crime victim centers shall include but are not limited to crisis intervention, law enforcement and court advocacy, group and individual follow-up counseling, transportation, and information and referral.

9.56(3) An applicant providing services to victims of domestic abuse must also provide or arrange safe shelter for victims and their children when needed at no cost to the victims. To ensure staff training and best practice standards, preference will be given to domestic abuse programs certified by the Iowa Coalition Against Domestic Violence.

9.56(4) An applicant providing services to victims of sexual abuse must also provide support to victims at the time of an evidentiary sexual abuse examination. To ensure staff training and best practice standards, preference will be given to sexual abuse programs certified by the Iowa Coalition Against Sexual Assault.

9.56(5) The applicant shall promote within the community a coordinated public and private effort to assist victims.

9.56(6) The applicant shall be an equal-opportunity employer and provide services on an equal-opportunity basis.

9.56(7) The applicant shall comply with applicable federal and state statutes and rules, all requirements specified in the grant between the department and any outside funding source, and all requirements in the RFP or any other contractual document.

9.56(8) The applicant shall assist victims in seeking state compensation benefits.

9.56(9) The applicant shall have a grievance procedure established for victims, employees and volunteers.

9.56(10) The applicant shall ensure that all employees and volunteers of crime victim centers that provide direct services to victims are trained as victim counselors as defined in Iowa Code section 915.20A.

9.56(11) The applicant shall provide services within the geographical service area without regard to a victim's ability to pay.

9.56(12) An existing program must document results of prior programming that demonstrate that the needs of victims

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have been met effectively and that the applicant has financial support from other sources.

61—9.57(13) Selection process. The division shall conduct a preliminary review of each application to ensure that the applicant is eligible, the application is complete, and the proposed victim service, training or technical assistance is consistent with the division's mission of providing quality assistance to crime victims and crime victim programs throughout the state.

9.57(1) In selection of competitive grantees, the division may utilize generally accepted methods of grant review including but not limited to checklists, quality scales, written comments by grant review committee members, and formulas based on past funding, population, clients served and available funds.

9.57(2) In selection of competitive grantees, the division shall establish a grant review committee. The committee shall submit recommendations for grant awards to the director. The director shall submit to the board the recommendations of the grant review committee and any alternative recommendations by the program staff.

a. The committee shall be comprised of representatives from the crime victim assistance board and experts in the fields of victim services, grant administration and management, and criminal justice.

b. The division shall provide the committee with information related to the applicant's performance with previous grants, the quality and quantity of services provided, and community support for the applicant.

c. The committee shall review the content of the grant applications and information provided by the division and members of the committee regarding the applicant and the geographical area to be served.

9.57(3) The board shall consider the recommendations of the grant review committee and the director to determine final competitive grant awards to the extent that funds are available and to the extent to which applications meet the RFP criteria. The board may reject any or all applications.

9.57(4) In selection of grantees for a focus grant, a written proposal shall be solicited from current grantees. Interested grantees shall submit a proposal to the director outlining the purpose, cost, and outcome of the proposed grant. The director shall submit a recommendation to the deputy attorney general for criminal justice who shall make a final decision based on the availability of funds and the merits of the proposal.

61—9.58(13) Notification of applicants. An applicant shall be notified within 90 days after the application due date whether the application has been denied or approved by the board and the amount of funds approved for the application.

61—9.59(13) Request for reconsideration.

9.59(1) An applicant may file with the board a request for reconsideration of the denial or of the amount of an award. The request for reconsideration must be submitted within ten working days of the date the notice of decision is mailed or otherwise issued by the director to the grantee. The request must state grounds for reconsideration. The board or a committee designated by the board chairperson shall review the request in a timely manner. A decision of the board or designated committee shall constitute final agency action.

9.59(2) At the time a request for reconsideration is received by the director, notice that a request for reconsideration has been filed shall be sent to all approved applicants whose funds may be affected by the request.

9.59(3) Funds shall not be disbursed pending a request for reconsideration to the extent that the funds are affected by the outcome of the request. Every applicant that would be adversely affected shall be notified if a request for reconsideration is approved, and grant awards shall be reduced as necessary.

61—9.60(13) Contract agreement.

9.60(1) A contract shall be negotiated by the department and the applicant.

9.60(2) Prior to entering into a contract, the department or the board may require modification of the proposed program, submission of further information or documents, or other stipulation of the applicant. The required modification, information, document, or stipulation shall be specified in the notification of grant award.

9.60(3) The applicant or the department may request a modification of the program budget to reflect the amount, expenses and activities allowed by the grant award. Both parties must agree to any modification of the grantee program budget.

9.60(4) In the event of a state, federal, or other audit, the grantee shall be responsible for the audit and liable for payment of any funds required to conduct the audit, to compensate for any grant disallowance, or to repay any funds received or spent contrary to the contract, these rules, or applicable law.

9.60(5) Funds shall be spent to meet the program proposals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

9.60(6) The grantee shall sign the certified assurances for the grant program at the time of application and at any time requested by the division.

9.60(7) Nothing in these rules shall be construed as limiting the remedies available to the state or the program for improper use of grant funds or other breach of the grantee's duties under the contract and applicable law.

61—9.61(13) Performance reports. Performance reports shall be submitted to the division from all grantees. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee by the program until such time as the report is received. Delinquent or inadequate reports from prior grants may detrimentally influence the award of grants for the following year.

61—9.62(13) Termination. Contracts may be terminated for the following reasons:

9.62(1) Termination by grantee. The grantee may terminate the contract at any time during the contract period by providing notice to the division.

9.62(2) Termination by department. The department may terminate a contract upon a ten-day notice when the grantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The department may terminate a contract when there is a reduction of funds by executive order or otherwise.

9.62(3) Termination for cause. If the grantee fails to fulfill its obligations under the agreement properly or on time, or otherwise violates any provision of the agreement, the board may terminate the agreement by written notice to the grantee. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished products and services provided by the grantee shall, at the option of the department, become state property. The department shall pay the grantee fair and equitable compensation for satisfactory performance prior to receipt of notice of termina-

ATTORNEY GENERAL[61](cont'd)

tion minus any funds owing to the department, e.g., damages for breach, improperly spent funds.

61—9.63(13) Financial statement supplied. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs incurred up to the effective date of the termination.

61—9.64(13) Indemnification. The grantee shall defend, indemnify, and hold harmless the state of Iowa, its officers, agents and employees and any of the state's federal funding sources for:

1. Grantee's performance or nonperformance of a contract entered into or violation of these rules.
2. Grantee's activities with subcontractors and all other third parties, or any other act or omission by a grantee, its agents, officers, and employees.

61—9.65(13) Records. Grantees shall keep statistical records of services provided and any other records as required by the division. The division shall have immediate access during working hours to records pertaining to the contract. No notice need be provided the grantee prior to inspection of the records.

These rules are intended to implement Iowa Code section 13.31.

ARC 3739B

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 21, “Approval of Postsecondary Schools,” Iowa Administrative Code.

The proposed amendments specify an additional rule and modifications to the sections concerning committee governance and approval of applicant schools.

Interested persons may submit comments orally or in writing by 4:30 p.m. on November 2, 2004, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)242-3344.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapters 261 and 261B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

Amend **283—Chapter 21** as follows:

CHAPTER 21

APPROVAL OF POSTSECONDARY SCHOOLS

283—21.1(261B) Advisory committee on postsecondary registration. *The advisory committee on postsecondary registration examines out-of-state college and university applications for operation in Iowa and makes recommendations to the commission.*

21.1(1) *The six-member committee is appointed annually by the Iowa college student aid commission and includes one representative from each of the following:*

- a. *The state board of regents.*
- b. *The department of education.*
- c. *The office of the secretary of state.*
- d. *The office of the attorney general.*
- e. *A community college located in this state.*
- f. *An accredited private postsecondary institution as defined in Iowa Code section 261.9, subsection 1, incorporated or otherwise organized under the laws of this state.*

21.1(2) *The committee shall meet as needed. Meetings may be called by commission staff or upon request of a majority of committee members. A nonvoting staff member shall preside as chairperson at the meetings.*

21.1(3) *The commission shall give advance public notice of the time and place of each meeting by posting the notice to the commission Web site. The notice will include the specific date, time and place of the meeting and the proposed agenda.*

21.1(4) *A quorum shall consist of two-thirds of the voting members of the committee. When a quorum is present, a position is carried by an affirmative vote of the majority of committee members eligible to vote.*

21.1(5) *The committee shall consider recommendations of the Iowa coordinating council for post high school education when making recommendations to the commission.*

21.1(6) *A specific time is set aside at each meeting for the public to address the committee. As a general guideline, a limit of five minutes will be allocated for each of these presentations. If a large group seeks to address a specific issue, the chairperson may limit the number of speakers. Members of the public who wish to address the committee during this portion of the meeting are required to submit a request to the executive director prior to the meeting. The person's name and the subject of the person's remarks must be noted. To accommodate maximum public participation, members of the public are encouraged to submit the request at least 72 hours in advance of the meeting. Members of the public who fail to submit a request may be recognized at the discretion of the presiding chairperson.*

21.1(7) *A report of all committee meetings will be provided to the commission at the commission's next regularly scheduled meeting.*

283—21.1(261B) 283—21.2(261B) Approval criteria. *The college student aid commission shall approve applicant schools that:*

1. *Are accredited by an agency recognized by the United States Department of Education Accrediting Agency Evaluation Unit or its successor agency.*
2. *Are approved for operation by the appropriate state agencies in all other states in which the schools operate or maintain a presence.*
3. *Are not subject to a limitation, suspension or termination order issued by the United States Department of Education or its successor agency.*
4. *Are free of sanctions from the schools' accrediting agencies and appropriate state agencies in all other states in which the schools operate or maintain a presence.*

COLLEGE STUDENT AID COMMISSION[283](cont'd)

5. Enroll students who attend classes in Iowa and employ at least one full-time Iowa faculty member or program coordinator *devoted to Iowa students who has with* graduate degrees, special training, experience, creative production or other accomplishments or distinctions that qualify them for their specific assignments.

6. Comply with Iowa Code section 261B.7 limiting the use of references to the secretary of state, state of Iowa, or college student aid commission in promotional material.

7. Comply with the requirements of Iowa Code section 261.9(1)“e” to “h.”

8. File annual reports that the commission requires from all Iowa colleges and universities.

9. ~~Have submitted a description of a proposed program(s) to members of the Iowa coordinating council for post-high school education and have responded to any inquiries or concerns. Comply with the Iowa coordinating council for post high school education's new-program/program location procedures.~~

10. Meet all state certification, accreditation, and approval standards established for Iowa colleges and universities that offer programs substantially the same as those offered by the applicant school.

11. *Demonstrate financial viability by providing a copy of the institution's most recent audit that was prepared by a certified public accounting firm no more than 12 months prior to the application and that provides an unqualified opinion.*

12. *Provide students with access to learning resources and support services requisite for the schools' degree programs.*

13. *Provide evidence that faculty within an appropriate discipline are involved in developing and evaluating curriculum for the program(s) being registered in Iowa.*

14. *Demonstrate that the schools have adequate physical facilities, including library services, owned or leased by the applicant and located in Iowa, or have a contract with a college or university located in Iowa which provides appropriate services.*

15. *Include a statement, signed by the chief executive officer of the applicant school, demonstrating the institution's commitment to the delivery of programs located in Iowa, and agreeing to provide alternatives for students to complete their programs at the same or other institutions if the applicant school closes the program before students have completed their courses of study.*

~~This rule is~~ These rules are intended to implement Iowa Code ~~chapter chapters~~ 261 and 261B.

ARC 3726B**CORRECTIONS DEPARTMENT[201]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 904.108 and 905.7, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 40, “Community-Based Corrections Administration,” Iowa Administrative Code.

The proposed amendments update language to clarify under what conditions certain employees of a judicial district department of correctional services may carry firearms.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 2, 2004. Such written materials should be directed to the Legal and Policy Division, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on November 2, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections Office, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of specific needs.

These amendments are intended to implement Iowa Code sections 904.108 and 905.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **201—40.1(905)**, definitions of “deputy director” and “immediate family,” as follows:

“Deputy director” shall mean the *respective regional* deputy director ~~of the division of community services~~ of the department of corrections.

“Immediate family” means spouse, child, parent, sibling, natural grandparent, stepparent, legal guardian, *or* an individual with whom the ~~inmate offender~~ lived and who was responsible for the ~~inmate offender~~ while the offender was a minor for a period of at least one year.

ITEM 2. Amend subrule 40.4(9) as follows:

40.4(9) The board of directors shall annually approve the budget and action plan of the judicial district department of correctional services which shall include the projected expenditures by program and identify the following source of revenue: (a) ~~State~~ *state* purchase of services contract, (b) federal and local grants or contracts, (c) residential client fees, (d) county support, (e) interest, (f) other miscellaneous revenues.

ITEM 3. Amend subrule 40.4(10) as follows:

40.4(10) One or more project advisory committees shall be established in accordance with Iowa Code chapter 905. The functions of the advisory committee(s) shall include, but need not be limited to, participation in and review of the district department's planning and program activities.

ITEM 4. Amend subrule 40.4(11) as follows:

40.4(11) The judicial district board of directors shall decide whether to allow employees of the judicial district department of correctional services to carry a firearm while in performance of official duties. If the board allows employees to carry firearms, the judicial district board shall establish policies and ensure that procedures are developed governing the authorization of probation/parole officers *and reserve peace officers subject to Iowa Code chapter 80D* to carry a firearm while in performance of their duties. Policy

CORRECTIONS DEPARTMENT[201](cont'd)

shall specify when the possession of a weapon is appropriate and who may approve authorization to carry a weapon.

ITEM 5. Amend paragraph **40.4(12)“a”** as follows:

a. Probation/parole officers *and reserve peace officers subject to Iowa Code chapter 80D* must have successfully completed the ~~community-based corrections staff safety training Iowa law enforcement academy~~ curriculum prior to receiving authorization to carry a firearm. *Probation/parole officers authorized to carry firearms prior to [insert the effective date of this amendment] will be exempt from this paragraph.*

ITEM 6. Rescind paragraphs **40.4(12)“c”** and **“d”** and reletter and amend paragraphs **“e”** to **“j”** as follows:

e c. Weapons ~~will~~ shall not be exhibited or used except in a perilous, life-threatening situation. Drawing, pointing, or discharging *a weapon* for effect or warning is prohibited.

f d. The judicial district director ~~shall file with the deputy director for community services~~ maintain a list of all officers granted permission to carry a weapon. The list shall include the officer's name, permit number, dates of permit, place and dates of training, ~~and whether the weapon is personal or department-owned and caliber of weapon.~~

g e. Permission granting an officer the right to carry a weapon shall be in writing. ~~A copy shall be submitted to the department of corrections, division of community services.~~

h f. Any officer who draws or discharges a weapon shall submit a written report of the incident ~~to the judicial district director within 24 hours of the occurrence through the department of corrections critical incident reporting policy.~~ The judicial district director shall file a report of the incident, the investigation, and the results of the investigation with the ~~regional deputy director for community services~~ within five days of the occurrence.

i g. No officer shall be required to carry a firearm, and such refusal shall not affect job assignments, promotion consideration, or employment possibility.

j h. Firearms shall be secured under lock and key when not in use in a location inaccessible to nonauthorized personnel.

ITEM 7. Amend paragraph **40.5(3)“b”** as follows:

b. The district department shall enter and maintain information required by the department of corrections statewide database application (ICBC *ICON*). That information will include all details necessary for the department of corrections to generate accurate and timely periodic statistical reports of district department, pretrial release, presentence investigations, field services workloads, residential facility occupancy, and specially funded treatment/monitoring programs. The district department shall devise and implement local policies and procedures to provide adequate training and support of data entry personnel and other end users, regularly audit data entry accuracy and timeliness and correct inaccurate or incomplete information discovered during that auditing process.

ARC 3730B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 25, “Housing Fund,” Iowa Administrative Code.

The proposed amendment adds a new program element to the home ownership portion of the Housing Fund. This amendment implements recent federal program changes that allow for additional emphasis on down payment assistance to first-time homebuyers through the American Dream Downpayment Initiative (ADDI) program.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on November 2, 2004. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendment will be held on November 2, 2004, at the above address in the first floor northwest conference room at 1:30 p.m. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on November 1, 2004, to be placed on the hearing agenda.

This amendment is intended to implement Iowa Code section 15.108(1)“a” and 24 CFR Parts 91 and 92.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 261—25.4(15) by adding the following **new** subrule:

25.4(4) Special provisions for the American Dream Downpayment Initiative (ADDI). The purpose of the ADDI program is to provide down payment assistance for the purchase of a principal residence. This program is available to low-income persons or households that are first-time homebuyers.

a. Applicant eligibility. Units of local government and nonprofit organizations may apply for ADDI funds.

b. Beneficiary requirements. Only first-time homebuyers (as defined in rule 261—25.2(15)) purchasing a principal residence and meeting income eligibility criteria shall be the beneficiaries of ADDI assistance.

c. Eligible uses of funds. Only the purchase of single-family, single-unit housing may be assisted by the ADDI program and only in the following manner:

(1) Down payment and reasonable or customary closing costs on the purchase of a principal residence. Reasonable costs include lender origination fees, credit report fees, fees for title evidence, fees for recording and filing of legal documents, attorneys' fees and appraisal fees.

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(2) Gap financing for the cost of acquisition of a principal residence for an eligible homebuyer.

d. Limitations on amounts of ADDI assistance.

(1) The maximum per unit assistance is \$10,000.

(2) The minimum per unit assistance is \$1,000.

(3) The maximum ADDI award per applicant is \$200,000.

e. ADDI program requirements. In addition to the housing fund program requirements stated within this chapter, the ADDI program requires specific federal regulations to be followed in the implementation of this program activity. Grant recipients must:

(1) Conduct targeted outreach to public housing tenants and families receiving rental assistance from public housing agencies to encourage low- and moderate-income (LMI) households to move from renting to home ownership.

(2) Ensure long-term affordability of all assisted units.

(3) Document income eligibility determination for all assisted units.

(4) Document that all assisted properties meet the property standards at 24 CFR 92.251.

(5) Require that all housing assisted with ADDI funds meets the HUD maximum per unit subsidy level.

(6) Meet all applicable cross-cutting federal regulations included in the HOME statute, including but not limited to federal regulations pertaining to nondiscrimination, fair housing practices, minority outreach, lead-safe housing regulations in assisted units constructed prior to January 1, 1978, and the Uniform Relocation Act (URA).

f. ADDI will be considered as a separate home ownership assistance activity. ADDI funds may be used as a stand-alone activity or utilized in conjunction with another housing fund eligible home ownership activity.

the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, November 5, 2004. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 282—17.2(272) as follows:

282—17.2(272) Renewal application forms. Application forms for renewal may be obtained from the board of educational examiners examiners' Web site at www.state.ia.us/boee or by contacting the office at (515)281-3245.

ITEM 2. Amend rule 282—17.4(272) as follows:

282—17.4(272) Recency of units for renewal. If a license is renewed at *on* or before *the* date of expiration (~~a person may file for renewal as early as 12 months prior to expiration date~~), the units for renewal are acceptable if earned during the term of the license. If a license is not renewed at *on the* date of expiration, the units for renewal must have been completed within the five-year period immediately preceding the date of application for the renewal.

ITEM 3. Amend rule 282—17.5(272) as follows:

282—17.5(272) Renewal requirements for the standard license.

17.5(1) Six units are needed for renewal. These units may be earned in any combination listed below.

a. One unit may be earned for each semester hour of *graduate* credit, completed *from a regionally accredited institution*, which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

b. One unit may be earned for each semester hour of *graduate or undergraduate* credit, completed *from a regionally accredited institution*, which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

c. One unit may be earned for each semester hour of credit, completed *from a regionally accredited institution*, which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.

d. One unit may be earned upon completion of each licensure renewal course or activity approved through guidelines established by the board of educational examiners.

e. Four units may be earned for successful completion of the National Board for Professional Teaching Standards cer-

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EDUCATIONAL EXAMINERS
BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, “Renewal of Licenses,” Iowa Administrative Code.

The proposed amendments will align the rules with teacher quality legislation, eliminate references to community college renewal programs that are no longer necessary, and reflect acceptance, for purposes of license renewal, of college credits from a regionally accredited institution.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, November 2, 2004, at 1 p.m. in Room 2 Southwest, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to

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tification. This may be used one time for either the standard or the master educator license.

17.5(2) ~~Effective September 1, 2002, all applicants~~ *Each applicant* renewing a standard license must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

- a. to d. No change.

ITEM 4. Amend rule 282—17.6(272) as follows:

282—17.6(272) Renewal requirements for a master educator license.

17.6(1) Four units are needed for renewal. These units may be earned in any combination listed below.

- a. One unit may be earned for each semester hour of *graduate* credit, completed *from a regionally accredited institution*, which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

- b. One unit may be earned for each semester hour of *graduate or undergraduate* credit, completed *from a regionally accredited institution*, which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

- c. One unit may be earned for each semester hour of credit, completed *from a regionally accredited institution*, which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.

- d. One unit may be earned upon completion of each licensure renewal course or activity approved through guidelines established by the board of educational examiners.

- e. Four units may be earned upon successful completion of the National Board for Professional Teaching Standards certification. If previously used to renew the standard license, this may not be used.

17.6(2) ~~Effective September 1, 2002, all applicants~~ *Each applicant* renewing a master educator license must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

- a. to d. No change.

ITEM 5. Amend rule 282—17.7(272) as follows:

282—17.7(272) Renewal requirements for a professional administrator's and area education agency administrator's an administrator license.

17.7(1) Four units are needed for renewal. These units may be earned in any combination listed below.

- a. One unit may be earned for each semester hour of *graduate* credit, completed *from a regionally accredited institution*, which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

- b. One unit may be earned for each semester hour of *graduate or undergraduate* credit, completed *from a regionally accredited institution*, which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

- c. One unit may be earned for each semester hour of credit, completed *from a regionally accredited institution*, which may not lead to a degree but which leads to completion of requirements for an administrative endorsement not currently held.

- d. One unit may be earned upon completion of each licensure renewal course or activity approved through guidelines established by the board of educational examiners.

17.7(2) ~~Effective September 1, 2002, all applicants~~ *Each applicant* renewing a professional administrator's or area education agency administrator's *an administrator* license must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

- a. to d. No change.

17.7(3) An applicant renewing a professional administrator's or area education agency administrator's *an administrator* license must submit documentation of completion of the evaluator training required in Iowa Code section 284.10. An applicant may apply for the five-year administrator license upon completion of this training.

The fee for the five-year administrator license is \$60. If the term of the *renewed administrator* license extends beyond the term of the applicant's *valid current* administrator or evaluator license, the fee for the renewed administrator or evaluator license will be prorated to equal \$12 per year of extension.

- a. The following are examples of the prorated fees for this extension.

- (1) If the practitioner's current license is extended by five years, the cost is \$60.

- (2) If the practitioner's current license is extended by four years, the cost is \$48.

- (3) If the practitioner's current license is extended by three years, the cost is \$36.

- (4) If the practitioner's current license is extended by two years, the cost is \$24.

- (5) If the practitioner's current license is extended by one year, the cost is \$12.

- (6) If the practitioner's current license is extended by less than one year, the cost is \$12.

- b. A waiver of ~~this requirement~~ *the evaluator training* may apply under the following conditions with appropriate documentation of any of the following:

- (1) The person is engaged in active duty in the military service of this state or of the United States.

- (2) The application of ~~this requirement~~ *the evaluator training* would impose an undue hardship on the person for whom the waiver is requested.

- (3) The person is an administrator in an accredited non-public school.

- (4) The person is practicing *in* a licensed profession outside this state.

- (5) The person is practicing in a nonadministrative or nonevaluative position.

17.7(4) Requirements for a one-year extension of the administrator license. A license valid for one year may be issued to an applicant who has not completed the required evaluator training necessary for renewal of the administrator license.

The fee for this one-year extension is \$40 ~~12~~.

This license may be renewed for one additional year at the same fee if the individual cannot complete the evaluator training during the term of the initial extension. This subrule will sunset January 1, 2005.

ITEM 6. Amend subrule 17.8(2) as follows:

17.8(2) ~~Effective September 1, 2002, all applicants~~ *Each applicant* renewing an initial license must submit documentation of completion of the child and dependent adult abuse

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

- a. to d. No change.

ITEM 7. Amend subrule 17.9(2) as follows:

17.9(2) ~~Effective September 1, 2002, all applicants~~ *Each applicant* renewing a substitute license must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

- a. to d. No change.

ITEM 8. Amend subrule 17.11(3) as follows:

17.11(3) Authority. The acceptance of licensure renewal credit is provided in ~~17.5“4,” 17.6“4” and 17.7“4.”~~ *17.5(1), 17.6(1) and 17.7(1).*

ITEM 9. Amend subrule 17.11(4) as follows:

17.11(4) Licensure renewal courses.

a. Licensure renewal courses are planned experiences, activities, and studies designed to develop skills, techniques, knowledge, and understanding of educational research and best practice, and model best practices in professional and organizational development. These courses support school improvement processes and practices and provide for the development of leadership in education. Approved courses and programs must be designed to follow the terms of the renewal requirements set forth for teacher and administrator *license* renewal in ~~17.5“4,” 17.6“4” and 17.7“4.”~~ *17.5(1), 17.6(1) and 17.7(1).*

The following indicators of quality will be used in evaluating the approved license renewal programs.

(1) The courses address specific student, teacher, and school needs evidenced in local school improvement plans, or

(2) The courses assist teachers in improving student learning, or

(3) The courses assist teachers in improving teaching evidenced through the adoption or application of practices, strategies, and information.

b. Approved teacher licensure renewal programs must offer and conduct a minimum of ten different courses for teachers during the calendar year, and approved administrative licensure renewal programs must conduct a minimum of five different courses for administrators during the calendar year.

c. Clock hours. ~~Fifteen~~ *A minimum of fifteen* scheduled clock hours of contact with the instructor, *study groups or action research teams* equal one renewal unit. Only whole units may be submitted to the board of educational examiners for license renewal.

d. Only renewal units offered through board of educational examiners-approved licensure renewal programs will be accepted for license renewal.

ITEM 10. Amend subrule 17.11(5) as follows:

17.11(5) Licensure renewal advisory committee. Licensure renewal programs must be developed with the assistance of a licensure renewal advisory committee.

a. Membership of the advisory committee. Once the advisory committee is established, matters pertaining to the term of membership shall be spelled out through established procedures. The advisory committee shall consist of no fewer than five members. The licensure renewal coordinator

shall forward the current updated list of licensure renewal advisory committee members to the board of educational examiners ~~no later than December 1 of each year upon request.~~

- (1) to (4) No change.

b. Responsibilities of licensure renewal advisory committee.

(1) ~~Licensure~~ *The licensure* renewal advisory committee shall be involved in:

~~1. (1)~~ *(1)* The ongoing area education agency, local district, or other agency staff development needs assessment.

~~2. (2)~~ *(2)* The design and development of an original application for a license renewal program.

~~3. (3)~~ *(3)* The development of criteria for the selection of course instructors, ; and these criteria shall include, but not be limited to, academic preparation, experience and certification status.

~~4. (4)~~ *(4)* The annual evaluation of licensure renewal programs.

~~(2) The advisory committee shall meet at least twice annually and shall maintain records of each meeting. These records shall be available for review by board staff and kept on file in the licensure renewal coordinator's office.~~

ITEM 11. Amend subrule 17.11(6) as follows:

17.11(6) Licensure renewal coordinator.

a. Each agency or organization offering an approved licensure renewal program shall identify a licensed (elementary or secondary) professional staff member who shall be designated as coordinator for the program. This function must be assigned; no application will be approved unless this responsibility has been assigned.

b. Responsibility of licensure renewal coordinators.

(1) File all reports as requested by the board of educational examiners.

~~(2) Submit an annual report on program offerings, participants and related information annually on or before December 1.~~

~~(3) (2)~~ *(2)* Serve as a contact person for the board of educational examiners.

~~(4) (3)~~ *(3)* Be responsible for the development of licensure renewal programs which address the professional growth concerns of the clientele.

~~(5) (4)~~ *(4)* Be responsible for the approval of all courses or units offered for licensure renewal.

~~(6) (5)~~ *(5)* Maintain records of approved courses as conducted and of the names of the qualifying participants.

~~(7) (6)~~ *(6)* Maintain a list of all course offerings and approved instructors and forward the list to the board of educational examiners.

~~(8) (7)~~ *(7)* Provide a record of credit for each participant and maintain a cumulative record of credits earned for each participant for a minimum of ~~five~~ *ten* years.

~~(9) (8)~~ *(8)* Be responsible for informing participants of the reporting procedures for renewal credits/units earned.

ITEM 12. Amend subrule **17.11(7)**, paragraph “f,” as follows:

f. Records retention. Each approved staff development agency/institution shall retain program descriptions, course activities, documentation of the qualifications of delivery personnel, evaluation reports, and completed renewal units for a period of ~~five~~ *ten* years. This information shall be kept on file in the offices of the area education agency licensure renewal coordinators and shall be made available to the board of educational examiners upon request.

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ITEM 13. Amend subrule **17.11(8)**, paragraphs “c” to “e,” as follows:

c. There must be evidence of a current survey of *using multiple data sources that includes, but is not limited to, district and building school improvement goals as well as* staff needs and an explanation of procedures used to derive such needs; this documentation must be furnished as a part of the application for a licensure renewal program.

d. Programs developed by eligible agencies shall be based on evidence gathered from *a the survey referenced in paragraph “c” above of staff needs of the personnel to be served by the licensure renewal program.*

e. Program objectives must be derived from identified *staff educational* needs in the district or districts or special groups to be served; these objectives shall be developed by the eligible agency seeking approval under licensure renewal programs.

ITEM 14. Rescind and reserve rule **282—17.12(272)**.

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 43, “School Transportation,” Iowa Administrative Code.

The proposed amendments update the rules governing the school bus driver’s authorization in accordance with statutory language in Iowa Code sections 285.3, 285.8 and 321.376.

Any interested person may submit oral or written comments on the proposed amendments by 4:30 p.m. on November 2, 2004, by addressing them to Max Christensen, Transportation Consultant, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4749; E-mail max.christensen@iowa.gov.

A public hearing will be held on November 2, 2004, at 1 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Education and advise of specific needs.

These amendments are intended to implement Iowa Code sections 285.3, 285.8 and 321.376.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 43.1(4) as follows:

43.1(4) Pupils whose residence is within two miles of *an established stop* on a bus route are within the area served by the bus and are not eligible for parent or private transporta-

tion at public expense, to the school served by the bus, except as follows:

- a. Bus is fully loaded.
- b. Physical handicap makes bus transportation impractical.

All parents or guardians who are required by their school district to furnish transportation for their children up to two miles to an established stop on a bus route shall be reimbursed pursuant to Iowa Code subsection 285.1(4).

ITEM 2. Amend rule 281—43.3(285) as follows:

281—43.3(285) Contract required. All private individuals *contractors* wishing to transport public school pupils to and from public school in privately owned vehicles must be under contract with the board of education. This *requirement* will not apply to *parents individuals* who transport their own children *only or other children on a not-for-hire basis.*

The contract form used shall be that provided by the department of education. (Form TR-F-4-497)

ITEM 3. Amend rule 281—43.6(285) as follows:

281—43.6(285) Contract with parents. Parents, *guardians, or custodians* undertaking to transport other children for hire, in addition to their own, are private contractors. These *parents individuals* must be under contract, and must obtain a *chauffeur’s an appropriate driver’s* license and a school bus driver’s *permit authorization.*

ITEM 4. Amend rule 281—43.7(285) as follows:

281—43.7(285) Vehicle requirements. Any vehicle used, other than that used by *parents individuals* to transport their own children *only or other children on a not-for-hire basis*, is considered to be a school bus and must meet all requirements *set-up* for the type of vehicle used. (This *requirement* is not intended to restrict the use of passenger cars during the time *they the vehicles* are not actually engaged in transporting *public or nonpublic* school pupils.)

ITEM 5. Amend subrule 43.10(4) as follows:

43.10(4) The bus shall be driven by a regularly approved driver holding *a chauffeur’s an appropriate driver’s* license and a school bus driver’s *permit authorization.* In addition, the buses must be accompanied by a member of the faculty or other employee of the school or a parent or other adult volunteer as authorized by a school administrator who will be responsible for the conduct and the general supervision of the pupils on the bus and at the place of the activity. If the faculty member is an approved driver, that person can act both as a driver and faculty sponsor.

ITEM 6. Amend subrule **43.10(5)**, paragraph “b,” as follows:

b. Transportation outside the state of Iowa shall not be provided without the approval of the *Interstate Commerce Commission Federal Motor Carrier Safety Administration of the United States Department of Transportation.*

ITEM 7. Amend subrule **43.10(5)**, paragraph “e,” as follows:

e. The driver of the bus shall be approved by the local board of education and must possess *a chauffeur’s an appropriate driver’s* license and a school bus driver’s *permit authorization.*

ITEM 8. Amend rule 281—43.14(285) as follows:

281—43.14(285) Driver age. School bus drivers must be at least *16 18* years of age on or before August 1 preceding the

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opening of the school year for which a school bus driver's ~~permit authorization~~ is required.

ITEM 9. Rescind rule 281—43.15(285) and adopt the following **new** rule in lieu thereof:

281—43.15(285) Physical fitness. Except for insulin-dependent diabetics, an applicant for a school bus driver's authorization must undergo a biennial physical examination by a licensed physician or surgeon, osteopathic physician or surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner. The applicant must submit annually to the applicant's employer the signed medical examiner's certificate (pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49), indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury, and freedom from any communicable disease, such as tuberculosis. At the discretion of the chief administrator or designee of the employer or prospective employer, the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.

ITEM 10. Amend rule 281—43.16(285) as follows:

281—43.16(285) Tests for tuberculosis.

43.16(1) Types of tests. An applicant for a school bus driver's ~~permit authorization~~ may take either the intradermal tuberculin skin test or a chest X-ray film. If the result of the intradermal tuberculin skin test is positive, however, an X-ray must then be taken. An applicant whose chest X-ray shows any active form of tuberculosis will be rejected. Patch tests are not acceptable for purposes of qualifying for a school bus driver's ~~permit authorization~~.

43.16(2) Duration of test results. An applicant who has had a negative intradermal tuberculin skin test or a negative chest X-ray within the ~~three-year~~ *two-year* period preceding the date of the applicant's physical examination as shown on the application for a school bus driver's ~~permit authorization~~ is not required to be retested.

ITEM 11. Rescind rule 281—43.17(285) and adopt the following **new** rule in lieu thereof:

281—43.17(285) Insulin-dependent diabetics. A person who is an insulin-dependent diabetic may qualify to be a school bus driver if the person meets all qualifications of Iowa Code subsection 321.375(3). Such driver is subject to an annual physical examination by a qualified medical examiner as listed in rule 281—43.15(285).

ITEM 12. Rescind rule 281—43.18(285) and adopt the following **new** rule in lieu thereof:

281—43.18(285) Authorization to be carried by driver. Every school bus driver shall carry a copy of the driver's school bus driver's authorization at all times when the driver is acting in that capacity.

ITEM 13. Rescind and reserve rules **281—43.19(285)** and **281—43.20(285)**.

ITEM 14. Amend rule 281—43.22(321) as follows:

281—43.22(321) Annual permit fee Fee collection and distribution of funds. ~~The department of education, commencing with the issuing of school bus permits for the~~

~~1992-93 school year and each year thereafter, shall assess an annual fee for each school bus driver's permit issued by the department. The department shall present for payment a fee statement to the employer of each driver issued a school bus permit. The fee statement shall contain the name(s), school bus permit number(s) and total fees due. A school bus permit shall not be issued for any driver whose fee has not been paid for the preceding year. The department of education, commencing with the biannual school bus inspections for the 2002-2003 school year and each year thereafter, shall assess a fee for each school bus or allowable alternative vehicle (pursuant to rule 761—911.7(321)) inspected by the department. The department shall present for payment a fee statement to the owner of each school bus or allowable alternative vehicle inspected.~~

The department of education shall submit an annual school bus driver training budget request for an amount equal to 100 percent of the total projected fees to be collected during the next fiscal year which shall be based on an amount equal to the number of school bus driver permits and allowable alternative vehicle inspections completed during issued as of May 1 of the previous school year multiplied by the permit inspection fee authorized by statute.

~~The department of education~~ One component of the annual budget shall be develop an annual "school bus driver and passenger safety education plan." ~~which~~ The plan shall outline the projects and activities to be funded included during each year. These projects and activities may include, but not be limited to, curriculum development costs, printing and distribution of safety literature and manuals, purchase of equipment used in conducting school bus safety education programs, and other expenditures deemed appropriate by the department of education.

ITEM 15. Amend rule 281—43.23(285) as follows:

281—43.23(285) Application form. The school bus driver and the board of education shall submit a signed an application for the school bus driver's ~~permit authorization~~ annually, and upon a form (~~TR-F-6-497B~~) prescribed by the department of education.

ITEM 16. Amend rule 281—43.24(321) as follows:

281—43.24(321) Permit Authorization denials and revocations. A person who believes that a school bus driver who holds a ~~permit an authorization~~ issued by the department of education or who seeks a school bus ~~permit authorization~~ has committed acts in violation of Iowa Code subsection 321.375(2) or rule 43.12(285) may file a complaint with the department against the ~~permit holder driver~~ or applicant. The department shall notify the ~~permit holder driver~~ or applicant that a complaint has been filed and shall provide the driver or applicant with a copy of the complaint to the driver. A hearing shall be set for the purpose of determining whether the bus driver's ~~permit authorization~~ shall be denied or revoked. Hearing procedures in 281—Chapter 6 shall be applicable to ~~permit authorization~~ revocation or denial proceedings.

ITEM 17. Amend subrule 43.25(2) as follows:

43.25(2) Notify at least four body and four chassis dealers of intent to purchase school transportation equipment and request bids.

ITEM 18. Amend subrule 43.25(8) as follows:

43.25(8) Notify the bureau of nutrition programs and school transportation of the department of education, school administration and accreditation bureau, of purchase and date of delivery so that arrangements can be made for the ini-

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tial school bus inspection. No ~~vehicle~~ *school bus* can be put into service until it has passed the ~~regular inspection conducted by a state approved inspection station~~ *a pre-use inspection conducted pursuant to Form TR-F-27B by the local board of education and the form has been provided to the bureau of nutrition programs and school transportation*. The initial school bus inspection will be conducted at the earliest possible time convenient to the school and the department of education.

ITEM 19. Amend rule 281—43.30(285) as follows:

281—43.30(285) Semiannual inspection. To facilitate the semiannual inspection program, school ~~and school~~ district officials shall send their buses to inspection centers as scheduled. A sufficient number of drivers or other school personnel shall be available at the inspection to operate the equipment for the inspectors. The fee for each vehicle ~~inspection inspected~~ shall be \$15 ~~\$20 effective July 1, 2005; \$25 effective July 1, 2007; and \$28 effective July 1, 2009.~~

ITEM 20. Amend rule 281—43.31(285) as follows:

281—43.31(285) Maintenance record. ~~As a part of the semiannual inspection program school~~ School officials shall cause the chassis of all buses and *allowable alternative vehicles*, whether publicly or privately owned, to be inspected annually and all necessary repairs made before the ~~opening of the school term each fall~~ *vehicle is put into service*. The inspection and repairs shall be recorded on a form (TR-F-27A) prescribed by the department of education. The completed form (TR-F-27A) shall be signed by the mechanic and carried in the glove compartment of the bus.

ITEM 21. Amend rule 281—43.32(285) as follows:

281—43.32(285) Drivers' schools. All school bus drivers shall attend classes or schools of instruction ~~when held as approved by the state~~ department of education and provided for in Iowa Code subsection 321.376(2). *The course of instruction for new drivers, to be successfully completed within the first six months of employment, shall also include the annual course of instruction for the school year in which the new driver is hired. All current school bus drivers shall attend only the annual course of instruction, unless the current driver misses a year of instruction. Upon missing a year of instruction, a current driver shall successfully complete the course of instruction for new drivers prior to receiving an authorization.*

ITEM 22. Amend rule 281—43.34(285), introductory paragraph, as follows:

281—43.34(285) Contract—privately owned buses. The board of education and a contractor who undertakes to transport ~~public and nonpublic~~ school pupils for the board, in privately owned vehicles, shall sign the ~~official a~~ contract *substantially similar to that* (Form TR-F-4-497) prescribed by the department of education (Form TR-F-4-497). The contract shall contain the following provisions:

ITEM 23. Amend subrule 43.34(1) as follows:

43.34(1) To furnish and operate at the contractor's own expense a legally approved vehicle of transportation (or a legally approved chassis on which may be mounted a school bus body supplied and maintained by the board of education) to and from the school each day beginning on the date set by the board over route as described, , transporting only children attending ~~public~~ the school designated by the ~~party of the second-part~~ board of education.

ITEM 24. Amend subrule 43.34(8) as follows:

43.34(8) To use only drivers and substitute drivers who have been approved by the board of education and have received a school bus ~~driver permits driver's authorization.~~

ITEM 25. Amend subrule 43.34(9) as follows:

43.34(9) To furnish the board of education an approved certificate of medical examination (Form TR-F-6-497B) for each person who is approved by the board of education to drive the bus.

ITEM 26. Amend subrule 43.34(10) as follows:

43.34(10) To attend ~~one county or regional~~ a school of instruction for bus drivers ~~when called as prescribed by the bureau of nutrition programs and school transportation of the department of education, school administration and accreditation bureau.~~ (If the owner does not drive the bus, the regular approved driver of the bus shall attend.)

ITEM 27. Amend subrule 43.34(15) as follows:

43.34(15) ~~Party of the second part~~ The board of education hereby reserves the right to change routing of the bus and, if additional mileage is required, it shall be at an extra cost not exceeding \$ per additional mile per month. If shortened

ITEM 28. Amend subrule 43.34(16) as follows:

43.34(16) The use of alcoholic beverages or immoral conduct by ~~party of the first part~~ the contractor or driver employed by the contractor shall automatically cancel this contract as provided in Iowa Code section 321.375.

ITEM 29. Amend subrule 43.34(18) as follows:

43.34(18) ~~Party of the first part~~ The contractor agrees that, ~~in case if the party~~ contractor desires to terminate the contract, the school bus will be sold to the board of education at their ~~its~~ request as provided in Iowa Code section 285.5(1). (Does This requirement does not apply to a passenger auto used as a school bus.)

ITEM 30. Amend subrule 43.34(19) as follows:

43.34(19) It is further agreed that ~~party of the second part~~ the board of education reserves the right to withhold and retain as property of the board of education two weeks' salary pending complete compliance with terms of contract or for the bus driver's being avoidably late.

ITEM 31. Amend rule 281—43.35(285), introductory paragraph, as follows:

281—43.35(285) Contract—district-owned buses. The board of education and a private individual undertaking to transport ~~public and nonpublic~~ school pupils for the board in school district-owned vehicles shall sign the ~~official a~~ contract *substantially similar to that* prescribed by the state department of education (Form TR-F-5-497(revised)). The contract shall contain the following provisions:

ITEM 32. Amend subrule 43.35(5) as follows:

43.35(5) To attend a ~~county or regional~~ school of instruction for bus drivers ~~when called as prescribed by the bureau of nutrition and school transportation of the department of education, school administration and accreditation bureau.~~

ITEM 33. Amend subrule 43.35(7) as follows:

43.35(7) That this contract shall not be in force until the driver presents an official school bus ~~driver permit driver's authorization.~~

EDUCATION DEPARTMENT[281](cont'd)

ITEM 34. Amend rule 281—43.36(285) as follows:

281—43.36(285) Accident reports. The superintendent of schools shall make a report to the *bureau of nutrition and school transportation of the school administration and accreditation bureau*, department of education, on any accident involving any vehicle in use as a school bus. The driver of the bus shall cooperate with the superintendent in making the report. The report shall be made on the department of transportation “Iowa Accident Report Form” or on Form TR-F-14R (Revised 1978), “School Bus Accident Report,” Iowa department of education.

ITEM 35. Amend subrule 43.38(3) as follows:

43.38(3) The driver shall not fill the *gasoline fuel* tank while the motor is running *or when there are passengers on the bus*.

ITEM 36. Amend subrule 43.39(4) as follows:

43.39(4) The bus shall be driven by an approved driver holding a ~~chauffeur’s~~ *an appropriate driver’s* license and a regular school bus driver’s ~~permit authorization~~ except that in actual emergency situations, where regular drivers are not available, certain other drivers, including students and teachers, may be used providing the following conditions are met. The driver shall:

- a. Be approved by the local board of education.
- b. Be at least ~~16~~ *18* years of age, be physically and mentally competent, and not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.
- c. ~~Have an emergency school bus driver’s permit issued by the state department of education.~~

ITEM 37. Rescind and reserve subrule **43.39(5)**.

ITEM 38. Amend subrule 43.43(2) as follows:

43.43(2) Drivers.

- a. The driver shall have an appropriate ~~chauffeur’s~~ *driver’s* license issued by the Iowa department of transportation.
- b. The driver shall possess a school bus ~~operator’s permit driver’s authorization~~ issued by the Iowa department of education.
- c. The driver shall receive training in accordance with state requirements for school bus drivers.

ITEM 39. Amend subrule **43.43(6)**, paragraph “b,” as follows:

- b. The carrier shall make a report to the ~~school administration and accreditation bureau~~, *bureau of nutrition and school transportation of the* department of education, on any accident involving property damage or personal injury while *a vehicle* is being used as a school bus. The report shall be made on the ~~Iowa department of transportation report form or on Form TR-F-14R, “School Bus Accident Report,” Iowa department of education~~ *Iowa Accident Report Form*.

ARC 3736B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.173, 455B.177, and 459.103, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 63, “Monitoring, Analytical and Reporting Requirements,” Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The purpose of these amendments is to conform Iowa’s regulation of concentrated animal feeding operations (CAFOs) to amended regulations adopted by the U.S. Environmental Protection Agency (EPA) in the February 12, 2003, Federal Register. Iowa has been delegated the authority by EPA to administer the National Pollutant Discharge Elimination System (NPDES) permit program under the federal Clean Water Act. Iowa Code section 455B.177(1) declares the state policy authorizing implementation of the federal permit system for regulating discharge of pollutants. Iowa Code section 455B.173 provides more specific rule-making authority relating to implementation of this program, including the authority to adopt federal effluent standards and rules relating to the operation of point sources. Iowa Code section 459.103 authorizes the adoption of rules relating to the operation of animal feeding operations.

The NPDES permit program requires that “point sources” that discharge or potentially discharge pollutants to waters of the state be operated pursuant to an NPDES permit. CAFOs, as defined in the federal regulations, have been considered point sources since 1974. The February 12, 2003, federal amendments revised the definition of CAFO and established new regulatory requirements. In order to remain consistent with federal law, and maintain delegated authority over this program, the Department must update its rules on this subject. It should be noted that one significant aspect of the NPDES/CAFO regulations, effluent standards at 40 CFR 412, was updated in 2003 as part of the Department’s annual updating of federal effluent standards.

Iowa law has provided for regulation of animal feeding operations for at least 35 years. CAFOs have been required to be regulated under the NPDES program for 30 years. The Iowa regulatory system has classified animal feeding operations as confinement feeding operations (CFOs), which are totally roofed and enclosed operations, and open feedlots. Iowa law has a long-established “no discharge” standard for CFOs. Thus, under the prior federal definition of CAFO, this Department, with the concurrence of the EPA, has considered CFOs not to be CAFOs, regardless of size. The new federal definition of CAFO makes it clear that CFOs that meet the applicable size thresholds are presumptively CAFOs. This change will bring an estimated 1,800 CFOs into regulation under the NPDES program.

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At the same time, over the past nine years, an extensive regulatory program for larger CFOs has been developed under Iowa law. For the most part, the Department asserts that the state regulatory system for CFOs is equivalent to, and in some areas is more stringent than, the federal CAFO program. The Department seeks to accomplish two things in these proposed amendments, with respect to regulation of CFOs: (1) The current regulation of CFOs under Iowa law is not to be weakened—where existing state rules are more stringent than the CAFO regulations, state law governs; and (2) to the extent legal and practicable, the Department seeks to minimize any additions or changes to the current regulatory system for CFOs. For example, the Department intends to maintain the current, recently revised state manure management plan system to satisfy the federal requirements for nutrient management. In addition, the Department intends to meet the NPDES permit requirement for CFOs through a general permit, to be developed prior to their being brought under CAFO regulation.

The following is a summary of the proposed amendments:

Items 1 and 2 adopt an updated form for CAFOs to apply for an NPDES permit, to conform to the federal regulations.

Item 3 moves and updates the monitoring and reporting requirements for CAFOs from Chapter 63 to Chapter 65 (see also Item 10, subrule 65.6(9)).

Item 4 updates the reference to federal CAFO regulations in paragraph 64.3(1)“h,” subparagraph (2).

Item 5 adds or amends definitions to conform to the CAFO regulations; the definition of “animal unit” is also amended to conform to amendments made by 2003 Iowa Acts, chapter 138.

The following paragraphs are the Department’s notice and statement of reasons pursuant to Iowa Code section 455B.105(3). In the definition of “large CAFO” and “medium CAFO,” the Department is proposing to retain the current policy of adding the animal units when multiple species are maintained at the same operation, to determine whether the threshold is met, as was the case under the prior CAFO definitions. The new federal regulations amend this policy at the federal level, so that the threshold value for each species is used individually, and the concept of “animal units” is no longer used. For example, if an operation maintained 900 beef cattle and 2,000 feeder swine, the threshold limit for each species, 1,000 and 2,500 respectively, would not be met, but if added together would exceed 1,000 animal units. The federal regulations would not define this operation as a CAFO; the definitions that the Commission proposes would define this operation as a CAFO. Thus the proposed amendments are arguably more stringent than the federal regulations. Therefore, pursuant to Iowa Code section 455B.105(3), the Commission is required to give notice of the arguably more stringent amendments, state its reasons for proposing a more restrictive rule, and explain the general financial impact upon affected parties.

The more restrictive definitions are proposed because they are consistent with current Iowa law and the prior federal and state CAFO definitions, they make common sense, and they will have little or no adverse impact on the regulated community. Iowa Code chapter 459, which is relatively new, adopted the animal unit concept for determining regulatory thresholds for animal feeding operations. The prior CAFO regulations, at both the state and federal levels, used this concept. Thus, the regulated community is familiar with and accustomed to its use. It does not make sense to this Department that a combined 900 head cattle, 2,000 head swine operation would have less potential for pollution than either a

1,000 head cattle operation or a 2,500 head swine operation, each of which would be defined as a CAFO. Moreover, the Department believes that this proposal will have little, if any, adverse impact, financial or otherwise, on the livestock industry. First, it does not appear that there are that many facilities in Iowa that feed more than one species at levels that would put them in this category of regulation. The Department solicits comment on this observation. Secondly, such facilities are already highly regulated under state law. The Department does not believe that being required to obtain an NPDES permit will add any significant regulatory or financial burdens to this size of operation. The Department solicits comment on this observation. The Department has considered the concern, which may apply to a significant number of operations, that a confinement operation that is just under the CAFO threshold, for example a 960 animal unit (2,400 head) swine operation, coupled with a small (50-100 head) beef cattle open lot would subject the small open lot to the more stringent CAFO manure control requirements. For this reason, the proposed amendments require, in the case of multiple species, that the type of housing, total confinement or open lot, be the same for each (i.e., both must be total confinement or both must be open lot).

Item 6 amends the minimum manure control requirements for open feedlot CAFOs to more closely conform to the federal language.

Item 7 amends the requirements for land application of manure by CAFOs and revises the language applicable to other CFOs. In Item 10, subrule 65.6(9) provides further detail. These provisions propose to utilize the Iowa manure management plan system to the maximum extent possible, to satisfy the federal requirements.

Item 8 rescinds rule 567—65.4(455B) and replaces it with a new rule. The current rule essentially adopts the prior federal definition of CAFO and requires those operations to obtain an operation permit. The proposed new rule deals with the same subject matter and incorporates more specifically the federal language. The new federal exception from regulation as a CAFO based on a “no potential to discharge” determination is incorporated.

Item 9 amends rule 567—65.5(455B), which addresses how the Department may designate smaller animal feeding operations as CAFOs, to more closely conform to the federal language.

Item 10 amends rule 567—65.6(455B), relating to the procedures and policies for obtaining an NPDES (formerly “operation”) permit for CAFOs and the conditions to be incorporated into NPDES permits for CAFOs, to conform with the new federal regulations. Facilities that were not previously regulated as CAFOs, i.e., the large total confinement facilities, are given until February 2006 to apply. It should be noted that this rule-making action does not include a “general permit” provision, but it is the intent of the Department to adopt in a separate rule making a general permit for total confinement CAFOs by that time.

Item 11 amends the language in subrule 65.7(1) relating to construction permit requirements for CAFOs.

Item 12 addresses current legal challenges to some of the federal regulations being implemented in these amendments. In the event that the underlying federal regulations are invalidated, it is the intent of the Department not to implement any invalidated federal regulations through state rules.

Any interested person may make written comments or suggestions on or before November 5, 2004. Comments should be directed to Gene Tinker, Department of Natural

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Resources, 900 East Grand, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail gene.tinker@dnr.state.ia.us.

Persons are invited to present oral or written comments at public hearings which will be held as follows:

| | |
|-------------------------------|---|
| November 2, 2004 9 a.m. | Cass County Community Center 805 W. Tenth Street Atlantic |
| November 2, 2004 6:30 p.m. | Plymouth County Extension 24 First Street NW Le Mars |
| November 4, 2004 6:30 p.m. | Marr Park 2943 Highway 92 Ainsworth |
| November 5, 2004 8:30 a.m. | Parks and Recreation Offices 200 First Street NE Waverly |
| November 5, 2004 1:30 p.m. | Wallace State Office Building Fifth Floor Conference Room 502 E. 9th Street Des Moines |

At each hearing, participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments may impact small business.

These amendments are intended to implement Iowa Code sections 455B.171 to 455B.191 and 459.301 to 459.318.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **567—60.2(455B)** by adding the following **new** definition in alphabetical order:

“CAFO” means “concentrated animal feeding operation” as defined in 567—65.1(455B).

ITEM 2. Amend subrule **60.3(2)**, paragraph “c,” as follows:

c. ~~Form 34—open feedlots~~ *Concentrated animal feeding operations (confinement and open)—NPDES Permit Application Form 542-3225 4001 (rev. [effective date of this amendment])*

ITEM 3. Amend rule 567—63.5(455B) as follows:

567—63.5(455B) Self-monitoring and reporting for animal feeding operations.

63.5(1) The following self-monitoring and reporting requirements may be imposed on an animal feeding operation in any operation NPDES permit issued for such an operation to a CAFO are specified in 567—subrule 65.6(9).

a. ~~Measurement of liquid level in a waste storage facility on a periodic basis.~~

b. ~~Measurement of daily precipitation, as appropriate.~~

c. ~~Sampling and analysis of groundwater as necessary to determine effects of wastewater application.~~

d. ~~Other measurements necessary to evaluate the adequacy of a waste disposal system.~~

~~**63.5(2)** Reports of the self-monitoring results shall be submitted to the department quarterly.~~

ITEM 4. Amend subrule **64.3(1)**, paragraph “h,” subparagraph (2), by changing the date “12-18-84” to “4-14-03.”

ITEM 5. Amend rule **567—65.1(455B)** as follows:

Amend the following definitions:

“Adjacent” means, for the purpose of determining whether an operation NPDES permit is required pursuant to 65.4(455B), that two or more open feedlots animal feeding operations are adjacent if they are separated at their closest points, including any solids settling facility, by less than 1,250 feet.

“Animal feeding operation” or “AFO” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market. ~~Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.~~

1. For purposes of water quality regulation, Iowa Code section 455B.200B as amended by 2002 Iowa Acts, chapter 1137, section 31, 459.301 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the separation distances in Iowa Code section 455B.162 air quality regulation, Iowa Code section 455B.161A as amended by 2002 Iowa Acts, chapter 1137, section 9 459.201, provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. The Code of Federal Regulations at 40 CFR §122.23 (1995 2003) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for manure disposal. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 455B.162 air quality regulation, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. To determine if two or more animal feeding operations are deemed to be one animal feeding operation, the first test is whether the animal feeding operations are under common ownership or management. If they are not under common ownership or management, they are not one animal feeding operation. For purposes of water quality regulation, the second test is whether the two animal feeding operations are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one animal feeding operation. For purposes of the separation distances in Iowa Code section 455B.162 air quality regulation, the second test is whether the two animal feeding operations are adjacent or utilize a common system for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one animal feeding operation.

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“Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. to 7. No change.
8. Turkeys weighing 112 ounces or more 0.018
9. Turkeys weighing less than 112 ounces 0.0085
- 9 10. Broiler or layer chickens Chickens weighing 48 ounces or more 0.010
11. Chickens weighing less than 48 ounces 0.0025

“Manure” means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs.

“Operation NPDES permit” means a written permit of the department authorizing pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a manure control facility or part of one CAFO.

Adopt the following **new** definitions in alphabetical order:

“Concentrated animal feeding operation” or “CAFO” means an AFO that is defined as a large CAFO, a medium CAFO, or a designated CAFO.

“Designated CAFO” means an AFO that has been designated as a CAFO pursuant to rule 65.5(455B,459).

“Land application area” means land under the control of an AFO owner or operator, whether the land is owned, rented, or leased, to which manure or process wastewater from the production area is or may be applied.

“Large concentrated animal feeding operation” or “large CAFO” means an AFO that stables or confines as many as or more than the number of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
2. 1,000 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
3. 2,500 swine, each weighing 55 pounds or more;
4. 10,000 swine, each weighing less than 55 pounds;
5. 500 horses;
6. 10,000 sheep or lambs;
7. 55,000 turkeys;
8. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
9. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
10. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
11. 1,000 animal units, where more than one category of animals is maintained using the same type of operation (confinement or open).

“Medium concentrated animal feeding operation” or “medium CAFO” means any AFO with the type and number of animals that fall within any of the ranges listed in paragraph “a” of this definition and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

- a. The type and number of animals that it stables or confines fall within any of the following ranges:
 - (1) 200 to 699 mature dairy cows, whether milked or dry;
 - (2) 300 to 999 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
 - (3) 750 to 2,499 swine, each weighing 55 pounds or more;
 - (4) 3,000 to 9,999 swine, each weighing less than 55 pounds;
 - (5) 150 to 499 horses;
 - (6) 3,000 to 9,999 sheep or lambs;

(7) 16,500 to 54,999 turkeys;

(8) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 300 to 999 animal units, where more than one category of animals is maintained using the same type of operation (confinement or open); and

b. Either one of the following conditions is met:

(1) Manure or process wastewater is discharged into water of the state through a man-made manure drainage system; or

(2) Manure or process wastewater is discharged directly into water of the state which traverses the operation.

“Process wastewater” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct-contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or by-products including manure, feed, milk, or eggs.

“Production area” means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility or any area used in the storage, handling, treatment, or disposal of mortalities.

“Small concentrated animal feeding operation” or “small CAFO” means an AFO that is designated as a CAFO and is not a medium CAFO.

ITEM 6. Amend subrule 65.2(2) as follows:

65.2(2) The minimum level of manure and process wastewater control for an open feedlot covered by the operation-permit application requirements of 65.4(1) or 65.4(2) that is defined or designated as a CAFO shall be retention of all manure flows and process wastewater from the feedlot production areas, and all other manure-contributing areas provided that discharge from overflow of manure and process wastewater control facilities is allowable if the production areas are designed, constructed and operated to contain all manure and process wastewater, including the runoff and precipitation resulting from the a 25-year, 24-hour precipitation event, and the production areas are operated in accordance with the additional measures and reporting required by 65.6(9). For any open feedlot CAFO maintaining swine, poultry or veal calves and constructed after [effective date of these rules], facilities shall be designed, constructed and operated to control a 100-year precipitation event. Open feedlots which design, construct, and operate manure and process wastewater control facilities in accordance with the require-

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ments of any of the manure *and process wastewater* control alternatives listed in Appendix A of these rules shall be considered to be in compliance with this rule, unless discharges from the manure *and process wastewater* control facility facilities cause a violation of state water quality standards. If water quality standards violations occur, the department may impose additional manure *and process wastewater* control requirements upon the feedlot, as specified in subrule 65.2(4).

Control of manure *and process wastewater* from open feedlots may be accomplished through use of manure-retention basins, terraces, or other runoff control methods. Diversion of uncontaminated surface drainage prior to contact with feedlot or manure-*and process wastewater* storage areas may be required. Manure-solids Solids-settling facilities shall precede the manure-retention basins or terraces.

ITEM 7. Amend subrule 65.3(1) as follows:

65.3(1) Application rate based on crop nitrogen *or phosphorous* use. A confinement feeding operation that is required to submit a manure management plan to the department under rule 65.16(455B) shall ~~not~~ apply manure ~~in excess of the nitrogen use levels necessary to obtain optimum crop yields. Calculations based on calculations~~ to determine the maximum manure application rate allowed under this subrule shall be performed pursuant to rule 65.17(459). *In addition, CAFOs are required to meet the standards for land application pursuant to 40 CFR 412, as provided in 65.6(9).*

ITEM 8. Rescind rule 567—65.4(455B) and adopt the following **new** rule in lieu thereof:

567—65.4(455B,459) NPDES permits required for CAFOs. Concentrated animal feeding operations (CAFOs) are point sources that require NPDES permits for discharges or potential discharges.

65.4(1) Duty to apply. Each CAFO owner or operator must apply for an NPDES permit, except as provided in subrule 65.4(2). The owner or operator of a CAFO that includes an open feedlot area must apply for an individual NPDES permit. The owner or operator of a CAFO that is totally roofed must submit a notice of intent for coverage under the applicable NPDES general permit; if there are particular operational or site-specific concerns, the department may require an individual permit. If a general permit has not been made available for a CAFO that is totally roofed, the owner or operator must apply for an individual NPDES permit. The application procedures are prescribed in rule 65.6(455B, 459).

65.4(2) Exception—"no potential to discharge" determination. An owner or operator of a large CAFO is not required to apply for an NPDES permit if the owner or operator is notified that the department has determined that the CAFO has "no potential to discharge" manure or process wastewater from both the production area and any land application areas. The term "no potential to discharge" (NPTD) means that there is no potential for any CAFO manure or process wastewater to be added to water of the state under any circumstances or climatic condition. In no case may such a determination be made if the operation has had a discharge within five years prior to the date of the request.

a. Request. A request for an NPTD determination shall be made in writing by the applicable permit application date specified in rule 65.6(455B,459). The request shall include all of the information required in subrule 65.6(7) for an application for individual permit and all pertinent information and reasons supporting the request. Any record of prior discharge must be included. The department may require addi-

tional information after review of the request and may gather additional information through an on-site inspection of the CAFO.

b. Process for making a determination. The department shall issue a public notice stating that a request has been received. The notice shall be accompanied by a fact sheet that includes: a brief description of the type of facility or activity; a brief summary of the factual basis for the request; and a description of the procedures for reaching a final decision on the determination, including how and when information in support of or in opposition to the request may be submitted. The department must base the decision to grant or deny the request on the administrative record, which includes all information submitted in support of or in opposition to the request and any other relevant data gathered by the department. Within 90 days of receiving the request, the department must notify the CAFO of its final determination. The determination is "final agency action" pursuant to Iowa Code chapter 17A. If the director's final decision is to deny the request, the owner or operator must apply for a permit within 30 days after the denial.

c. Effect of determination on compliance. Any unpermitted CAFO that discharges manure or process wastewater into water of the state is in violation of the law even if it has received an NPTD determination. Any CAFO owner or operator that has received an NPTD determination but anticipates a change that could create the potential for a discharge must apply for and obtain coverage under an NPDES permit prior to the change.

d. Authority to require a permit. Where the department has issued an NPTD determination, the department retains the authority to subsequently require NPDES permit coverage if circumstances at the facility change, if new information becomes available, or if the department determines that the CAFO has a potential to discharge.

ITEM 9. Amend rule 567—65.5(455B) as follows:

567—65.5(455B,459) Departmental evaluation; CAFO designation.

65.5(1) The department may evaluate any animal feeding operation to determine if any of the following conditions exist that is not defined as a large or medium CAFO and designate it as a CAFO if after an on-site inspection it is determined to be, or may reasonably be expected to be, a significant contributor of manure or process wastewater to water of the state. In making this determination, the department shall consider the following factors:

a. Manure from the operation is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in subrule 65.2(1), 65.2(2), or 65.2(3) The size of the operation and the amount of manure or process wastewater reaching water of the state;

b. Manure from the operation is causing or may reasonably be expected to cause pollution of a water of the state The location of the operation relative to water of the state; or

c. Manure from the operation is causing or may reasonably be expected to cause a violation of state water quality standards. The means of conveyance of manure or process wastewater to water of the state;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into water of the state; and

e. Other relevant factors.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall:

a. ~~Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no~~ *No animal feeding operation with an animal capacity less than that specified in subrule 65.4(2) for a medium CAFO shall be required to apply for a permit designated as a CAFO unless manure and process wastewater from the operation is discharged into a water of the state:*

a. ~~through~~ *Through a man-made manure or process wastewater drainage system; or*

b. ~~is discharged into a water of the state which~~ *Which traverses the operation.*

b. ~~Institute~~ *However, any animal feeding operation determined to be, or reasonably expected to be, a significant contributor of manure or process wastewater to water of the state shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions. This paragraph shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.*

65.5(3) *The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation, unless the required corrective actions are taken prior to that time.*

ITEM 10. Amend rule 567—65.6(455B) as follows:

567—65.6(455B,459) Operation NPDES permits.

65.6(1) Existing animal feeding operations holding an operation NPDES permit. Animal feeding operations which hold a valid operation NPDES permit issued prior to July 22, 1987 [effective date of this amendment], are not required to reapply for an operation NPDES permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.6(10).

65.6(2) Existing animal feeding operations not holding an operation NPDES permit. Animal feeding operations in existence on July 22, 1987 [effective date of this amendment], which are covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) ~~were defined as CAFOs under rules that were in effect prior to [effective date of this amendment]~~ but have not obtained a permit, shall apply for an operation NPDES permit prior to January 22, 1988 [30 days after effective date of this amendment]. *Animal feeding operations in existence on [effective date of this amendment], which were not defined as CAFOs under rules that were in effect prior to [effective date of this amendment] shall apply for an NPDES permit no later than February 13, 2006. Once application has been made, the animal feeding operation is authorized to continue to operate without an operation NPDES permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.*

65.6(3) Expansion of existing animal feeding operations. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) ~~defined as a CAFO~~ shall apply for an operation NPDES permit at least 180 days prior to the date operation of the expanded facility is scheduled expansion. Op-

eration of the expanded portion of the facility shall not begin until an operation NPDES permit has been obtained.

65.6(4) New animal feeding operations. A person intending to begin a new animal feeding operation which, upon completion, will be covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) ~~defined as a CAFO~~ shall apply for an operation NPDES permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an operation NPDES permit has been obtained.

65.6(5) Permits required as a result of departmental evaluation designation. An animal feeding operation which is required to apply for an operation NPDES permit as a result of departmental evaluation designation (in accordance with the provisions of 65.5(2)“a”) (455B,459)) shall apply for an operation NPDES permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, *provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.*

65.6(6) Voluntary operation permit applications. Applications for operation NPDES permits received from animal feeding operations ~~which are not meeting the operation permit requirements of subrules 65.4(1) to 65.4(3) defined as CAFOs~~ will be acknowledged by the department and returned to the applicant. Operation NPDES permits will not be issued for facilities ~~which are not meeting the permit requirements of subrules 65.4(1) to 65.4(3) defined or designated as CAFOs.~~

65.6(7) Application forms. An application for an operation NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain detailed information ~~as deemed necessary~~ *required* by the department. The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure or process wastewater control system.

65.6(8) Compliance schedule. When necessary to comply with a present standard or a standard which must be met at a future date, an operation NPDES permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to subrule 65.7(1).

65.6(9) Permit conditions. Operation NPDES permits shall contain conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the ~~manure control system is~~ *production area and land application areas* are properly operated and maintained, to protect the public health and beneficial uses of state ~~waters~~ *water*, and to prevent water pollution from manure or process wastewater storage or application operations. ~~Self-monitoring and reporting requirements which may be imposed on animal feeding operations are specified in 567—subrule 63.5(1). More stringent conditions of Iowa Code chapter 459 and this chapter that apply to confinement feeding operations, if any, shall govern. For CAFOs that maintain cattle, swine, or poultry, the following conditions shall be included:~~

a. *Manure management plan. Total confinement CAFOs satisfy the requirements of 65.3(1) by complying with the manure management plan requirements in this chapter for confinement feeding operations and any additional requirements*

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

for CAFOs in these rules, provided that requirements relating to phosphorous shall be included by the date required in 567—65.17(459). Open feedlot CAFOs shall comply with the substantive requirements of 567—65.17(459) and any additional manure management plan requirements for CAFOs in these rules by December 31, 2006. Open feedlot CAFOs are not required to submit their manure management plan or pay fees provided in 567—65.16(455B), and plans may be signed and maintained by the operator. CAFOs that seek to obtain coverage under an NPDES permit after December 31, 2006, shall have a manure management plan developed and implemented upon the date of permit coverage.

b. Additional manure management plan requirements. In addition to the manure management plan requirements of 567—65.17(459), CAFOs shall:

(1) Ensure adequate storage of manure and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(2) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

(3) Ensure that clean water is diverted, as appropriate, from the production area;

(4) Prevent direct contact of confined animals with water of the state;

(5) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants; and

(6) Include the nutrient content of process wastewater that is land applied.

c. Reporting requirements. A permittee with outside liquid impoundments must submit quarterly reports by April 10, July 10, October 10 and January 10, following the respective calendar quarters, documenting daily precipitation, the weekly impoundment liquid levels, the volume of liquid removed from the impoundments, and the date, time, duration, and estimated volume of any overflow. All permittees must submit an annual report to the department. The annual report must include:

(1) The number and type of animals, whether in open confinement or housed under roof;

(2) Estimated amount of total manure and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

(3) Estimated amount of total manure and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

(4) Total number of acres for land application covered by the manure management plan and the total number of acres under control of the CAFO that were used for land application of manure and process wastewater in the previous 12 months;

(5) Summary of all manure and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and

(6) A statement indicating whether the current version of the CAFO's manure management plan was developed or approved by a certified nutrient management planner.

65.6(10) Permit renewal. An operation NPDES permit may be issued for any period of time not to exceed five years. An application for renewal of an operation NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the provisions of those rules of the department which apply to the facility in effect at the time of renewal.

A permitted animal feeding operation which does not meet the operation permit requirements of subrules 65.4(1) to 65.4(3) ceases to be a CAFO will be exempted from the need to retain that an NPDES permit at the time of permit renewal, and the existing operation permit will not be renewed, if the permittee can demonstrate to the satisfaction of the department that there is no remaining potential for a discharge of manure or process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

65.6(11) Permit modification, suspension or revocation. The department may modify, suspend, refuse to renew or revoke in whole or part any operation NPDES permit for cause. Cause for modification, suspension or revocation of a permit may include the following:

a. to c. No change.

d. Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.

e. A determination by the department that the continued operation of a confinement feeding operation CAFO constitutes a clear, present and impending danger to public health or the environment.

65.6(12) No change.

ITEM 11. Amend subrule **65.7(1)**, paragraph “a,” as follows:

a. ~~An animal feeding operation covered by the operation permit provisions of subrules 65.4(1) to 65.4(3)~~ A CAFO shall obtain a construction permit prior to for constructing, installing, or modifying a manure or process wastewater control system for that operation prior to operating the CAFO or reopening the operation if it was discontinued for 24 months or more, or as required by a compliance schedule after being designated as a CAFO.

ITEM 12. Amend rule **567—65.22(455B)** by adding the following **new** first unnumbered paragraph:

The [insert effective date of these amendments] amendments to this chapter are intended to implement the federal CAFO regulations effective April 14, 2003. It is the intent of these amendments to fully implement applicable federal CAFO regulations. However, in the event that one or more of the federal regulations are declared to be invalid and are stayed, it is the intent of the department not to implement any applicable amendments during any period in which the underlying federal regulation is stayed by the federal courts.

ARC 3735B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission proposes to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The proposed amendments implement changes to requirements for construction permits and the duration for which construction permits are effective. Requirements for proper use of the Master Matrix are clarified, and language is modified to more clearly describe determination of groundwater table location.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 8, 2004. Written comments should be directed to Gene Tinker, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail gene.tinker@dnr.state.ia.us.

Also, there will be a public hearing on November 8, 2004, at 8:30 a.m. in the Fifth Floor Conference Rooms of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 459.103.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **567—65.1(455B)** as follows:

Rescind the definition of “commercial manure applicator.”

Adopt the following **new** definition in alphabetical order: “Seasonal high water table” means the part of the soil profile closest to the soil surface that becomes saturated (usually in the spring) as observed in a monitoring well or determined by recognition of soil redoxomorphic features.

NOTE: Redoxomorphic features refers to the gleying or motting or both that occur under saturated conditions within the soil profile.

ITEM 2. Amend subrule **65.7(1)**, paragraph “b,” as follows:

b. Except as provided in subrule 65.7(2), a confinement feeding operation ~~beginning construction, installation or modifications after March 20, 1996,~~ shall obtain a construc-

tion permit prior to beginning construction, installation of an animal feeding operation structure used in that operation or prior to beginning significant modifications in the volume or manner in which the manure is stored or reopening the operation if it was discontinued for 24 months or more if any of the following conditions exist:

(1) ~~The confinement feeding operation uses an aerobic structure, anaerobic lagoon or earthen manure storage basin. Constructing or modifying an unformed manure storage structure or egg washwater storage structure, or constructing or modifying a confinement building that uses an unformed manure storage structure or egg washwater storage structure, regardless of the animal unit capacity of the operation.~~

(2) ~~The confinement feeding operation uses a formed manure storage structure and has an animal weight capacity of 625,000 pounds or more for animals other than bovine or 1,600,000 pounds or more for bovine. Constructing, installing or modifying a confinement building or a formed manure storage structure at a confinement feeding operation if, after construction, installation or expansion, the animal unit capacity of the operation is 1,000 animal units or more. This subparagraph also applies to confinement feeding operations that store manure exclusively in a dry form.~~

(3) ~~The confinement feeding operation structure provides for the storage of manure exclusively in a dry form and has an animal weight capacity of 1,250,000 pounds or more for animals other than bovine or 4,000,000 pounds or more for bovine. Initiating a change that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in any unformed manure storage structure, even if no construction or physical alteration is necessary.~~

(4) ~~Initiating a change, even if no construction or physical alteration is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in a formed manure storage structure if, after the change, the animal unit capacity of the operation is 1,000 animal units or more.~~

(4) (5) ~~Constructing or modifying an egg washwater storage structure or a confinement building at a The confinement feeding operation uses that includes an egg washwater storage structure, regardless of the size of the operation.~~

(6) ~~Initiating a change that would result in an increase in the volume of egg washwater or a modification in the manner in which egg washwater is stored, even if no construction or physical alteration is necessary.~~

(5) (7) ~~The confinement feeding operation contains more than one species and the sum of the total animal weight capacity for each species divided by the permit threshold for that species is greater than 1.0(100%). Reopening a confinement feeding operation if it was closed for 24 months or more and if any of the following apply:~~

1. ~~The confinement feeding operation uses an unformed manure storage structure or egg washwater storage structure, regardless of the animal unit capacity of the operation;~~

2. ~~The confinement feeding operation includes only confinement buildings and formed manure storage structures and has an animal unit capacity of 1,000 animal units or more.~~

(8) ~~Installing a permanent manure transfer piping system, unless the department determines that a construction permit is not required.~~

(6) (9) ~~The confinement feeding operation is proposed for an increase in animal weight capacity which would otherwise require a construction permit, even though no physical changes or construction is necessary. Repairs or improve-~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ments to a confinement building such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required because an increase in the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

ITEM 3. Amend subrule 65.7(5) as follows:

65.7(5) Expiration of construction permits. The construction permit shall expire if construction, as defined in rule 65.8(455B), is not begun within one year or completed within three years of the date of issuance. The director may grant an extension of time to begin construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action, or a person who has a controlling interest in the proposed operation has been classified as a habitual offender.

ITEM 4. Amend subrule **65.9(1)** by adopting the following **new** paragraph “p”:

p. A copy of any master matrix evaluation provided to the county.

ITEM 5. Amend paragraph **65.10(3)“b”** by adopting the following **new** subparagraph (3):

(3) The board shall not use the master matrix to evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if the construction is for expansion of a confinement feeding operation structure constructed prior to April 1, 2002, and, after the expansion of the confinement feeding operation, its animal unit capacity is 1,666 animal units or less. The board may still submit comments and shall submit a recommendation to approve or deny the application.

ITEM 6. Amend paragraph **65.15(7)“c”** as follows:

c. Determination of groundwater table. For purposes of this rule, groundwater table means the average annual is the seasonal high water table determined by a licensed professional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If, and where a construction permit is required, approved by the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either formed or unformed structures:

1. *Temporary monitoring wells.* Each of the three temporary monitoring wells by measuring the water level seven days after installation shall be developed according to 567—subrule 110.11(8). The top of the well screen shall be within 5 feet of the ground surface. Each well shall be extended to at least 2 feet below the bottom of the liner of an unformed manure storage structure, or to at least 2 feet below the footings of a formed manure storage structure.

- *Unformed structures.* For an unformed manure storage structure, each monitoring well may be installed in the existing boreholes resulting from the The corings required in subrule 65.15(6) may be completed as temporary monitoring wells for this purpose.

- *Formed structures.* For a formed manure storage structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure,

with one of the wells close to the corner of deepest excavation. If the formed structure is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

2. *Test pits.* The department may allow use of test pits in lieu of temporary monitoring wells if seasonal variation in climatic patterns, soil and geologic conditions prevent accurate determination of seasonal high water table or prior to the construction of an unformed manure storage structure liner to ensure that the required separation distance to the groundwater table is being met. Test pits will be configured 3 feet × 4 feet × 4 feet, or equivalent volume, and the bottom of each pit shall be 2 feet below the floor of the proposed anaerobic lagoon, or earthen manure storage basin, earthen aerobic structure or runoff control basin. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS qualified staff for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. One test pit shall be located in each corner and one in the center of the proposed manure control structure, unless otherwise specified by the department. A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils, including mottling;
- Construction specifications; and
- Weather conditions both prior to and during the period in which test pits are open.

(2) The seasonal high water table shall be determined by measuring the groundwater level in the temporary monitoring wells not earlier than seven days following installation and shall include consideration of NRCS soil survey information, soil characteristics The monitoring well measurements, along with evaluation of site soils for indicative features such as color and mottling, other existing water table data, and other pertinent information shall be used to determine the average annual high water table. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.15(7)“b,” the level to which the groundwater table will be lowered will be considered to represent the average annual seasonal high water table.

ARC 3723B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These amendments expand eligibility for the home- and community-based services ill and handicapped waiver. Current rules prohibit waiver eligibility for a person aged 21 or older who is eligible for federal Supplemental Security In-

HUMAN SERVICES DEPARTMENT[441](cont'd)

come benefits. Such persons remain eligible for Medicaid, but lose eligibility for services under the ill and handicapped waiver. No other home- and community-based services waiver contains this restriction. In addition, a Medicaid recipient who reaches the age of 21 also loses eligibility for additional private-duty nursing and personal care services offered under the Medicaid Care for Kids program.

These restrictions constitute a hardship to young adult waiver recipients, who are often still pursuing their education. These amendments extend eligibility under the ill and handicapped waiver through the age of 24 for SSI recipients who were receiving waiver services upon reaching the age of 21. Additionally, these amendments provide for a higher allowable monthly cost for these recipients to include the costs of nursing and personal care services that would have been provided under the Care for Kids program if the consumer were under the age of 21. The Department could provide for these services under an exception to policy, but adding these provisions to waiver eligibility criteria allows the Department to receive federal matching funds for the cost of the services.

These amendments do not provide for waivers in specified situations because they confer a benefit on the consumers affected. Individuals may request a waiver of eligibility policies in Chapter 83 under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3722B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before November 3, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 3745B**REGENTS BOARD[681]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 9, “Policies, Practices and Procedures,” Iowa Administrative Code.

The Eightieth General Assembly enacted 2004 Iowa Acts, House File 2418, which eliminates the month by which the Board of Regents must make the decision about increases in tuition or mandatory fees. The statute formerly required that the Board of Regents make the final decision about the increase in tuition or mandatory fees for a fiscal year in November of the previous fiscal year.

Any interested person may make written comments or suggestions on the proposed amendment on or before November 2, 2004. Such comments may be directed to Pam Elliott, Board of Regents, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905. E-mail may be sent to pelliot@iastate.edu.

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

This amendment is intended to implement Iowa Code section 262.9.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 681—9.6(262) as follows:

681—9.6(262) Notification to students on increases in tuition, fees or charges.

9.6(1) Not less than 30 days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, the board of regents shall send written notification of the amount of the proposed increase and a copy of the ~~doeket~~ memorandum relating to the proposed increase to the elected president of the government of the student body at ~~the~~ *each* affected ~~institutions~~ *institution*. The materials shall be sent to the person identified by each institution as the student government president and ~~mailed transmitted~~ to the student government office listed in each university directory.

The final decision on the increase in tuition for a fiscal year shall be made ~~no later than the~~ *at* a regular meeting held ~~in November of the preceding fiscal year. The regular meeting held in November will be held in Ames, Cedar Falls, or Iowa City which is to be held in one of the three universities' cities but is not~~ and will not be held during the period in which classes have been suspended for Thanksgiving vacation ~~a university holiday or break.~~

9.6(2) If a proposal to increase tuition, fees, or charges at one of the universities is increased ~~over from~~ the previous ~~month meeting's written proposal~~, or a new fee or charge is proposed, student leaders shall be sent copies of the ~~doeket~~ *agenda* materials, and an additional 30 days' notice to students will be scheduled prior to board action on that portion of the proposal.

ARC 3713B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission gives Notice of Intended Action to amend Chapter 1, “Description of Organization,” Chapter 2, “Public Records and Fair Information Practices,” Chapter 5, “Purchasing,” Chapter 6, “Contracts for Professional Services,” Chapter 7, “Authorized Use and Users,” Chapter 8, “Scheduling Disputes,” Chapter 13, “Site Charges and Other Fees,” Chapter 14, “Access to Facilities,” and Chapter 18, “Procedure for Rule Making,” Iowa Administrative Code.

The proposed amendments are designed to update the Iowa Telecommunications and Technology Commission’s rules to reflect recent organizational changes and changes to Iowa Code section 8D.13. These amendments consolidate professional services contracting rules into existing purchasing rules, and allow the Commission to join a purchasing cooperative or consortium using competitive bidding procedures to take advantage of cost-efficient pricing for telecommunications services for the agency and its authorized users. The proposed amendments also clarify or add detail to agency administrative rules, and some amendments are non-substantive in nature.

Any interested party may comment on the proposed amendments on or before November 2, 2004. Comments should be directed to Ron Koontz, Administrative Rules Coordinator, Iowa Telecommunications and Technology Commission, P.O. Box 587, Johnston, Iowa 50131-0587; telephone (515)725-4708; E-mail ron.koontz@icn.state.ia.us.

There will be a public hearing on November 2, 2004, beginning at 1 p.m. in the Thompson Conference Room, Building W-4, Camp Dodge, Johnston, Iowa 50131, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons with special needs should contact the Commission prior to the hearing if accommodations need to be made.

These amendments are intended to implement Iowa Code chapter 8D.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rules 751—1.4(17A,8D) to 751—1.7(8D) as follows:

751—1.4(17A,8D) Educational Education telecommunications council. The educational education telecommu-

nications council establishes scheduling and site usage policies for educational users of the network, coordinates the activities of the regional telecommunications councils and develops proposed rules and changes to rules for recommendations to the commission. The council also may recommend long-range plans for enhancements needed for educational applications.

The regional telecommunications councils advise the educational education telecommunications council on the assessment of local educational needs and the coordination of program activities including scheduling.

751—1.5(17A,8D) Administrative divisions of the commission.

1.5(1) Executive director. The executive director or the commission’s designee administers the programs and services of the commission in compliance with the Iowa Code and the rules adopted by the commission.

1.5(2) Administrative divisions. In order to carry out the functions of the commission, the following divisions have been established:

~~a. The administrative services division provides office support for the commission including processing payrolls, records management, forms management, mail, provision of common supplies, central office telephone service, word processing, data entry, reception services, information coordination, personnel, labor relations, contract maintenance and supervision, parking coordination and other duties as assigned from time to time.~~

~~b. a. The financial finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing and contracting activities, developing and maintaining computer-based information systems used by the commission, and other duties as assigned from time to time.~~

~~e. b. The operations and planning engineering division is responsible for strategic and long-range planning, purchasing, executing the implementation of Part III, (the third construction phase of the network), the federal projects, and provisioning of video services, data/Internet services, and voice toll services for authorized users, and other duties as assigned from time to time.~~

~~d. The network engineering division is responsible for the technical operation of the network including research and development and network systems support. It oversees all physical aspects of the network’s equipment and circuits and performs other duties as assigned from time to time.~~

~~e. c. The network services service delivery division is responsible for the delivery of services related to the operation of the network. This division coordinates the activities between the engineers and, individual sites, and authorized users. It is responsible for cost estimates for a site, tracking service requests, executing installation services, maintaining a circuit data base, and assisting authorized users in finding the best structure to meet the users’ needs and other duties as assigned from time to time. The division provides office support for the commission including processing payrolls, records management, facility management, mail, provision of common supplies, central office telephone service, word processing, data entry, reception services, personnel, labor relations, and parking/access coordination.~~

~~f. The public affairs division The division also provides information and education to the public about the commission and the fiberoptic network. This division and maintains the commission’s World Wide Web page on the Internet and~~

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

publishes a newsletter every two months. This division monitors legislation and the division director provides the legislative liaison for the commission. Members of this division also perform other duties as assigned from time to time.

751—1.6(17A,8D) Location of offices.

1.6(1) Main office. The main office is located in Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131. The mailing address is P.O. Box 587, Johnston, Iowa 50131-0587. The telephone number is (515)323 725-4692. The toll-free number is 1-800-645-8860. The fax number is (515) 323 725-4751. The E-mail address is info@icn.state.ia.us. The home page address on the World Wide Web is <http://www.icn.state.ia.us>.

1.6(2) Network. The hub for the network is located at in the State Area Command (STARC) Joint Forces Headquarters (JFHQ) Armory, 6100 N.W. 78th Avenue, Johnston, Iowa 50131.

751—1.7(8D) Business hours.

1.7(1) Normal business hours. The normal business hours of the main office are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. The Network Service Operations Center (NSC/NOC) operates on a 24-hour, seven-day-a-week basis at the network hub in the STARC JFHQ Armory in Johnston, Iowa.

1.7(2) Emergency incident reports. The 24-hour emergency telephone number for reporting cable cuts, system failures or other incidents is 1-800-572-3940, or (515)323-4400.

ITEM 2. Amend **751—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~sections~~ 17A.3(1)"a," and Iowa Code Supplement ~~section~~ 8D.1, 8D.3(3)"b," 8D.5 and 8D.6.

ITEM 3. Amend subrule **2.3(7)** as follows:

Amend paragraph "**b**," subparagraphs (1) and (5), as follows:

(1) Photocopies (direct copies on 8½" × 11", or 8½" × 14", or 11" × 17" paper)—50 cents per page. *For direct photocopies on 11" × 17" paper—65 cents per page. The fee for photocopies exceeding 11" × 17" will be reviewed and reasonable fees will be provided to the requester upon determination of the commission's ability to photocopy.*

(5) Computer stored information. Tape files—\$100 per file, copied only to 9-track tape with standard IBM labels. Three UP gummed mailing labels and 4 UP Cheshire labels, 30 cents per 1000 records read, and \$10 per 1000 labels written. There will be a \$15 charge for information copied on computer diskette. A minimum charge of \$15 or actual cost will be assessed, whichever is greater. *Electronic copies (8½" × 11", 8½" × 14", or 11" × 17") will be provided at no cost. Requests for electronic copies exceeding 11" × 17" will be reviewed, and reasonable fees will be provided to the requester upon determination of the commission's ability to transmit and duplicate.* Programming time over ten minutes will be charged at the rate of \$25 per hour or any portion of an hour.

Amend paragraph "**d**" as follows:

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees (\$15 per hour or any portion of one hour) may be charged where appropriate for either paper or electronic copy requests. In addition, all costs for retrieval and

copying of information stored in electronic storage systems may be charged to the requester.

ITEM 4. Amend subrule **5.1(2)**, paragraph "**f**," as follows:

f. There is an immediate or emergency need for the item or service; or

ITEM 5. Amend subrule **5.7(1)** by adopting the following **new** paragraph "**g**":

g. Failure to pay subcontractors.

ITEM 6. Amend rule 751—5.15(8D) as follows:

751—5.15(8D) Rejection of bids and proposals. The commission reserves the right to reject any or all bids or proposals. The commission may reject bids and proposals because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the commission's requirements, *insufficient evidence of a vendor's financial capability to perform the contract*, or for any other reason if the commission determines that the best interests of the commission will be served by rejecting any or all bids. Following the rejection of bids or proposals, the commission may request new bids or proposals at any time deemed convenient by the commission.

ITEM 7. Adopt **new** rule 751—5.20(8D) as follows:

751—5.20(8D) Purchasing cooperative or consortium.

5.20(1) Membership. The commission may join a purchasing cooperative or consortium composed of public or private entities, or both, for the purpose of reducing overall telecommunications business costs for the commission and its authorized users.

5.20(2) Prior to joining a purchasing cooperative or consortium, the commission shall review membership obligations to ensure that the commission's membership obligations are not inconsistent with the laws and rules governing the commission.

5.20(3) Notwithstanding the provisions of subrules 5.20(1) and 5.20(2), the commission may purchase goods and services through the cooperative or consortium without conducting a separate competitive bidding process so long as the cooperative or consortium uses or used a competitive bidding process or procedure.

ITEM 8. Rescind and reserve **751—Chapter 6**.

ITEM 9. Amend rule **751—7.1(8D)**, definition of "public agency," as follows:

"Public agency" means a state agency, an institution under the control of the board of regents, the judicial department as provided in Iowa Code section 8D.13, subsection 17, a school corporation, a city library, a regional library as provided in Iowa Code chapter 256, a county library as provided in Iowa Code chapter 336, or a judicial district department of correctional services established in Iowa Code section 905.2 to the extent provided in Iowa Code section 8D.13, subsection 15, an agency of the federal government, or a U.S. Post Office which receives a federal grant for pilot and demonstration projects. "Public agency" also includes any homeland security or defense facility established by the administrator of the homeland security and emergency management division of the department of public defense or the governor, or any facility connected with a security or defense system as required by the administrator of the homeland security and emergency management division of the department of public defense or the governor.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

ITEM 10. Amend rule 751—7.2(8D) as follows:

751—7.2(8D) Internet access provided by the network. The commission may offer Internet access to authorized users as permitted by these rules and 751—Chapter 16 as one of the services of the network.

ITEM 11. Amend rule 751—8.3(8D) as follows:

751—8.3(8D) Role of administrative scheduling committee telecommunications advisory council. The administrative scheduling committee telecommunications advisory council is responsible for establishing scheduling and site usage policies for noneducational users of the network, including libraries, subject to the approval of the commission. The administrative scheduling committee telecommunications advisory council shall establish conflict resolution policies for noneducational users subject to the approval of the commission to resolve scheduling disputes.

ITEM 12. Adopt **new** subrule 13.1(2) as follows:

13.1(2) Notwithstanding the provisions of the introductory paragraph of rule 13.1(8D), if an entity requests a receiving site location in a video classroom facility which is authorized by, but not funded by the originator of the session, the video classroom facility shall bill the requesting entity directly for the operating costs relating to the site.

ITEM 13. Amend rule 751—14.4(8D) as follows:

751—14.4(8D) Charges and financial responsibility. The *Except as provided for by subrule 13.1(2), the* requesting authorized user is financially responsible for all commission-established site and site usage charges incurred for the use of the classroom.

ITEM 14. Amend paragraph **18.5(3)“a”** as follows:

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

ITEM 15. Amend subrule 18.5(5) as follows:

18.5(5) Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Executive Director, ICN, Camp Dodge, W-4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, telephone (515)323 725-4692, in advance to arrange access or other needed services.

ITEM 16. Amend subrules 18.6(4) to 18.6(11) as follows:

18.6(4) Qualified requesters for regulatory analysis—economic impact. The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a); *Iowa Code section 17A.4A* after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

18.6(5) Qualified requesters for regulatory analysis—business impact. The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b); *Iowa Code section 17A.4A* after a proper request from:

- a. to d. No change.

18.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis, the commission shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4) *Iowa Code section 17A.4A*.

18.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1) *Iowa Code section 17A.4A*.

18.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5) *Iowa Code section 17A.4A*.

18.6(9) Publication of a concise summary. The commission shall make available to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5) *Iowa Code section 17A.4A*.

18.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), *Iowa Code section 17A.4A* unless a written request expressly waives one or more of the items listed in the section.

18.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b) *Iowa Code section 17A.4A*.

ITEM 17. Amend subrule **18.12(1)**, paragraphs “b” and “f,” as follows:

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8 *Iowa Code section 17A.4*, or if the commission in its discretion decides to include such reasons;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, *Iowa Code section 17A.4* or the commission in its discretion decides to include such reasons; and

ITEM 18. Amend **751—Chapter 18**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ARC 3712B

TRANSPORTATION
DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 326.15, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 500, "Interstate Registration and Operation of Vehicles," Iowa Administrative Code.

2004 Iowa Acts, Senate File 2070, section 32, amends Iowa Code section 326.15 to allow qualified fleet owners to certify the destruction of credentials for motor vehicles registered under Iowa Code chapter 326. The proposed amendments provide a means for qualified fleet owners to self-certify the destruction of International Registration Plan (IRP) credentials in lieu of returning the credentials to the Department to be destroyed. Definitions for "qualified fleet owner" and "self-certification of IRP credential destruction" are also added. Other changes to Chapter 500 include adding a new rule concerning fleet deletions and making editorial amendments.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.iowa.gov.
5. Be received by the Director's Staff Division no later than November 2, 2004.

A meeting to hear requested oral presentations is scheduled for Thursday, November 4, 2004, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Director's Staff Division at the address listed in this Notice no later than November 15, 2004.

These amendments are intended to implement Iowa Code chapter 326 as amended 2004 Iowa Acts, Senate File 2070.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making actions:

ITEM 1. Amend rule **761—500.1(326)** by adding the following **new** definitions in alphabetical order:

"Qualified fleet owner" means a motor carrier who has received written approval by the department to self-certify IRP credential destruction.

1. The motor carrier must meet the following requirements to receive Department approval:

- A minimum of five years experience with IRP registration in any jurisdiction;
- A satisfactory IRP payment history. A satisfactory payment history includes, but is not limited to, no suspension of IRP registration in the last five years due to late payment or returned check because of insufficient funds; and
- A satisfactory rating from the U.S. Department of Transportation in the previous five years.

2. A motor carrier subject to a federal out-of-service order in the current year or any of the four prior years shall not be eligible to self-certify IRP credential destruction.

"Self-certification of IRP credential destruction" means a signed statement that is completed by a qualified fleet owner certifying all IRP credentials have been destroyed.

ITEM 2. Amend rule **761—500.1(326)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 326.2, ~~and 326.33 and 326.15 as amended by 2004 Iowa Acts, Senate File 2070, section 32.~~

ITEM 3. Amend paragraph **500.4(2)"a"** as follows:

a. Units being removed from the fleet shall be deleted on the renewal vehicle schedule and the plates, cab cards and stickers must be returned. *In lieu of returning the plates, cab cards and stickers, a qualified fleet owner may submit a self-certification of IRP credential destruction to the office of motor carrier services on or before December 31.* Registration renewal fees for deleted units shall be assessed unless the *self-certification of IRP credential destruction or the plate plates, cab cards and stickers* are received by the office of motor carrier services or postmarked on or before December 31. *Operating a vehicle with credentials that were self-certified as destroyed shall result in suspension of the self-certification privilege.*

ITEM 4. Amend paragraph **500.4(2)"b"** as follows:

b. Units being stored shall be marked "stored" on the renewal vehicle schedule and the plates, cab ~~card~~ cards and stickers must be returned in accordance with rule 761—500.5(321).

ITEM 5. Amend rule **761—500.4(326)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 326.6, ~~and 326.14 and 326.15 as amended by 2004 Iowa Acts, Senate File 2070, section 32.~~

ITEM 6. Amend 761—Chapter 500 by renumbering rules **761—500.10(326)** through **761—500.24(326)** as **761—500.11(326)** through **761—500.25(326)** and adopting **new** rule 761—500.10(326) as follows:

761—500.10(326) Fleet deletions. A registrant may remove vehicles from the fleet at any time after the commencement of the registration year or from the second-half invoice. Vehicles shall be deleted on the vehicle schedule, and the plates, cab cards and stickers must be returned to the office of motor carrier services at the time of deletion. In lieu of returning the plates, cab cards and stickers, a qualified fleet owner may submit a self-certification of IRP credential destruction on or before the vehicle(s) deletion date to the office of motor

TRANSPORTATION DEPARTMENT[761](cont'd)

carrier services. Second-half fees for deleted vehicles shall be assessed unless the self-certification of IRP credential destruction or the plates, cab cards and stickers are received by the office of motor carrier services or postmarked on or before June 30. Operating a vehicle with credentials that were self-certified as destroyed shall result in suspension of the self-certification privilege.

This rule is intended to implement Iowa Code sections 326.12 and 326.15 as amended by 2004 Iowa Acts, Senate File 2070, section 32.

ITEM 7. Amend renumbered rule 761—500.20(326) as follows:

761—500.20(326) Making claim for refund. A refund of fees previously paid for the registration of vehicles may be made in accordance with Iowa Code sections 321.126, 321.127, 321.173 and 326.15 as amended by 2004 Iowa Acts, Senate File 2070, section 32. A claim for refund on an IRP registered vehicle(s) may be obtained from the office of motor carrier services. *In lieu of returning the plates, a qualified fleet owner may submit a self-certification of IRP credential destruction on or before the vehicle's deletion date to the office of motor carrier services.*

This rule is intended to implement Iowa Code ~~section~~ sections 321.126, 321.127 and 326.15 as amended by 2004 Iowa Acts, Senate File 2070, section 32.

ARC 3714B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments make technical changes to benefit recipients of Medicaid coverage for employed persons with disabilities by:

- Changing the order in which premium payments are applied. Under the current rules, payments sent in with the intent to establish a credit to pay for the following month are first applied to past months that remain unpaid, with the result that the recipient does not get the medical card at the first of the month. A recipient who did not have medical expenses in a previous month may prefer not to pay the premium for that month. This amendment will give recipients more control over when payment for previous months will occur.
- Allowing refund of an excess of funds in the recipient's account if the premium amount owed is zero for two consecutive months. Some recipients whose premium is changed to zero due to changes in income continue to submit payments. Current rules do not allow refund of this money until the account is inactive or the recipient requests the refund.

These amendments do not provide for waivers in specified situations because the changes benefit the recipients affected.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3468B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on September 15, 2004.

The Department finds that these amendments confer a benefit on Medicaid recipients by giving them more control over the application of their premium payments and prompt refunds on unnecessary payments. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments became effective on October 1, 2004.

These amendments are intended to implement Iowa Code section 249A.3, subsection 2(a).

The following amendments are adopted.

Amend subparagraph **75.1(39)"b"(4)** as follows:

(4) Payments received shall be applied in the following order:

1. To the ~~current calendar~~ month in which the payment is received if the premium for the current calendar month is unpaid.
2. To the following month ~~if payment is when the payment is received in the last five working days of the month and the premium after a billing statement has been issued for the following month is unpaid.~~
3. To prior months when a full payment has not been received. Payments shall be applied beginning with the most recent unpaid month before the current calendar month, then the oldest unpaid prior month and forward until all prior months have been paid.

4. When premiums for all months above have been paid, any excess shall be held and applied to any months for which eligibility is subsequently established, as specified in numbered paragraphs "1," "2," and "3" above, and then to future months when a premium becomes due.

5. Any excess on an inactive account shall be refunded to the client after two calendar months of inactivity *or of a zero premium* or upon request from the client.

[Filed Emergency After Notice 9/23/04, effective 10/1/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3722B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments expand eligibility for the home- and community-based services ill and handicapped waiver. Current rules prohibit waiver eligibility for a person aged 21 or older who is eligible for federal Supplemental Security Income benefits. Such persons remain eligible for Medicaid, but lose eligibility for services under the ill and handicapped waiver. No other home- and community-based services waiver contains this restriction. In addition, a Medicaid recipient who reaches the age of 21 also loses eligibility for additional private-duty nursing and personal care services offered under the Medicaid Care for Kids program.

These restrictions constitute a hardship to young adult waiver recipients, who are often still pursuing their education. These amendments extend eligibility under the ill and handicapped waiver through the age of 24 for SSI recipients who were receiving waiver services upon reaching the age of 21. Additionally, these amendments provide for a higher allowable monthly cost for these recipients to include the costs of nursing and personal care services that would have been provided under the Care for Kids program if the consumer were under the age of 21. The Department could provide for these services under an exception to policy, but adding these provisions to waiver eligibility criteria allows the Department to receive federal matching funds for the cost of the services.

These amendments do not provide for waivers in specified situations because they confer a benefit on the consumers affected. Individuals may request a waiver of eligibility policies in Chapter 83 under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments September 15, 2004.

The Department finds that notice and public participation for these amendments are contrary to the public interest in that the amendments relieve hardship on the affected consumers and conserve state funds by allowing federal matching of expenses and enabling the consumers to avoid institutional care. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department finds that these amendments confer a benefit on the affected consumers and the state. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 3723B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

These amendments became effective October 1, 2004.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend paragraph **83.2(1)“b”** as follows:

b. The person must be ineligible for Supplemental Security Income (SSI) if the person is 21 years of age or ~~over~~ *older, except that persons who are receiving ill and handicapped waiver services upon reaching the age of 21 may continue to be eligible regardless of SSI eligibility until they reach the age of 25.*

ITEM 2. Amend paragraph **83.2(2)“b”** as follows:

b. *The Except as provided below, the total monthly cost of the ill and handicapped waiver services shall not exceed the established aggregate monthly cost for level of care as follows:*

| <u>Skilled level of care</u> | <u>Nursing level of care</u> | <u>ICF/MR</u> |
|------------------------------|------------------------------|---------------|
| \$2,480 | \$852 | \$3,019 |

(1) For consumers eligible for SSI who remain eligible for ill and handicapped waiver services until the age of 25 because they are receiving ill and handicapped waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the consumer would be eligible under 441—subrule 78.9(10) if still under 21 years of age.

(2) If more than \$500 is paid for home and vehicle modification services, the service worker shall encumber up to \$500 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12-month period.

[Filed Emergency 9/23/04, effective 10/1/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3743B

REGENTS BOARD[681]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents adopts amendments to Chapter 1, “Admission Rules Common to the Three State Universities,” and Chapter 2, “Supplemental Specific Rules for Each Institution,” Iowa Administrative Code.

These amendments remove references to specific amounts for application fees in Chapters 1 and 2 and create a new rule

in Chapter 1 with all application fees listed. Having all the fees in one rule will make amending the rules when fees are changed by the Board of Regents in the future more efficient.

Subrule 2.27(6) is being rescinded since the fee is no longer assessed.

Previously, the Board submitted a Notice of Intended Action (**ARC 3262B**, published on March 31, 2004) to amend these two chapters by removing references to specific amounts for application fees, and adopted the amendments in **ARC 3433B**, published on June 23, 2004. A public hearing was held during the comment period and no comments were received. Subsequently, at the August 10, 2004, meeting of the Administrative Rules Review Committee, the Board was asked to place the specific amounts back in the rules.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because these amendments are filed at the direction of the Administrative Rules Review Committee.

The Board also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on September 24, 2004. The application fees that are being added back into the rules have been in place for some time.

A waiver provision is not included. The Board has adopted a uniform waiver rule which may be found at 681 IAC 19.18(17A).

The Board of Regents adopted these amendments on September 15, 2004.

These amendments are intended to implement Iowa Code section 262.9(3).

These amendments became effective September 24, 2004.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 681—1.1(262), introductory paragraph and first unnumbered paragraph, as follows:

681—1.1(262) Admission of undergraduate students directly from high school. Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this rule and also any special requirements for the curriculum, school, or college of their choice.

Applicants must submit a formal application for admission, together with the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262), and have their secondary school provide a transcript of their academic record, including credits and grades, rank in class, and certification of graduation. Applicants must also submit scores from the American College Test (ACT) or the Scholastic Aptitude Test (SAT), or the equivalent, as determined by each university. The Test of English as a Foreign Language (TOEFL) is required of foreign students whose first language is not English. Applicants may be required to submit additional information or data to support their applications.

ITEM 2. Amend rule 681—1.2(262), introductory paragraph and first unnumbered paragraph, as follows:

681—1.2(262) Admission of undergraduate students by transfer from other colleges. Students desiring admission to the University of Iowa, Iowa State University, or the Uni-

REGENTS BOARD[681](cont'd)

versity of Northern Iowa must meet the requirements in this rule and also any special requirements for the curriculum, school, or college of their choice.

Applicants must submit a formal application for admission, together with the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262), and request that each college they have attended send an official transcript of record to the admissions office. High school academic records and standardized test results may also be required. The Test of English as a Foreign Language (TOEFL) is required of foreign students whose first language is not English.

ITEM 3. Add the following **new** rule:

681—1.7(262) Application fees. Application fees required for admission to the University of Iowa, Iowa State University and the University of Northern Iowa are as follows:

University of Iowa

| | |
|---|------|
| Undergraduate domestic student | \$40 |
| Undergraduate international student | \$60 |
| Graduate/professional domestic student | \$60 |
| Graduate/professional international student | \$85 |
| Re-entry fee | \$20 |

Iowa State University

| | |
|-------------------------------------|------|
| Undergraduate domestic student | \$30 |
| Undergraduate international student | \$50 |
| Graduate domestic student | \$30 |
| Graduate international student | \$70 |
| Veterinary Medicine | \$60 |

University of Northern Iowa

| | |
|-------------------------------------|------|
| Undergraduate domestic student | \$30 |
| Undergraduate international student | \$50 |
| Graduate domestic student | \$30 |
| Graduate international student | \$50 |

This rule is intended to implement Iowa Code section 262.9(3).

ITEM 4. Amend subrule 2.27(1) as follows:

2.27(1) Admission. Admission to the graduate college may be granted to a graduate of an institution in the United States which is accredited by a recognized regional association. For information concerning graduate study in a particular academic discipline, prospective students are invited to correspond with the head of the department in which they wish to study.

Application forms are available at <http://www.admissions.iastate.edu/>. These forms, together with official transcripts, the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262) and a statement of quartile rank, should be forwarded to the Office of Admissions at least one month prior to the opening of the quarter in which the student wishes to matriculate. If the undergraduate degree is from Iowa State University or if the student is applying for nondegree admission, no application fee is assessed.

ITEM 5. Rescind and reserve subrule **2.27(6)**.

[Filed Emergency 9/24/04, effective 9/24/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3742B

REVENUE DEPARTMENT[701]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 40, "Determination of Net Income," Chapter 53, "Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

A rule making containing amendments to Chapters 40, 53 and 59 was Adopted and Filed and published in IAB Vol. XXVII, No. 5, p. 330, on September 1, 2004, as **ARC 3613B**. These amendments became effective October 6, 2004. However, due to 2004 Iowa Acts, First Extraordinary Session, House File 2581, Division IX, Items 3, 4 and 9 through 12 of **ARC 3613B** are no longer correct.

Item 1 amends rule 40.60(422) to provide that the additional first-year depreciation allowance (special 50 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code for assets placed in service after May 5, 2003, but before January 1, 2005, is applicable for individual income tax.

Item 2 amends rule 40.65(422) to provide that the increase in the expensing allowance authorized in Section 179(b) of the Internal Revenue Code for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, is applicable for individual income tax.

Item 3 amends rule 53.22(422) to provide that the additional first-year depreciation allowance (special 50 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code for assets placed in service after May 5, 2003, but before January 1, 2005, is applicable for corporation income tax.

Item 4 amends rule 53.23(422) to provide that the increase in the expensing allowance authorized in Section 179(b) of the Internal Revenue Code for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, is applicable for corporation income tax.

Item 5 amends rule 59.23(422) to provide that the additional first-year depreciation allowance (special 50 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code for assets placed in service after May 5, 2003, but before January 1, 2005, is applicable for franchise tax.

Item 6 amends rule 59.24(422) to provide that the increase in the expensing allowance authorized in Section 179(b) of the Internal Revenue Code for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, is applicable for franchise tax.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impractical because of the need to implement the new provisions of this law and to correct the previously Adopted and Filed rules.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on September 24, 2004. The previously Adopted and Filed rules need to be corrected immediately to reflect the new provisions of this new law.

These amendments are intended to implement Iowa Code sections 422.3, 422.7, 422.32, and 422.35 as amended by 2004 Iowa Acts, First Extraordinary Session, House File 2581, Division IX.

REVENUE DEPARTMENT[701](cont'd)

These amendments became effective September 24, 2004.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 701—40.60(422) as follows:

701—40.60(422) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. For tax periods beginning on or after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets placed in service after September 10, 2001, but before January 1, 2005 May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets placed in service after September 10, 2001, but before January 1, 2005 May 6, 2003, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, is applicable for Iowa individual income tax. The depreciation deduction allowed on the Iowa individual income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets placed in service after May 5, 2003, but before January 1, 2005.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 2004 Iowa Acts, *First Extraordinary Session, Senate House File 442 2581, section 38.*

ITEM 2. Amend rule 701—40.65(422) as follows:

701—40.65(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, ~~does not apply~~ *is applicable* for Iowa individual income tax. *The Section 179 expensing allowance on the Iowa individual income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. The expensing allowance is limited to \$100,000 for federal tax purposes, but the expens-*

ing allowance is limited to \$25,000 for Iowa tax purposes. Taxpayers who claim an expensing allowance on their federal income tax return in excess of \$25,000 must limit their deduction on the Iowa return to \$25,000. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expense allowance and related depreciation, along with the gain or loss on the sale of qualifying assets placed in service on or after January 1, 2003, but before January 1, 2006, can be calculated on Form IA 4562A.

See rule 701—53.23(422) for examples illustrating how this rule is applied.

This rule is intended to implement Iowa Code section 422.7 422.3 as amended by 2004 Iowa Acts, First Extraordinary Session, House File 2581, section 37.

ITEM 3. Amend rule 701—53.22(422) as follows:

701—53.22(422) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa corporation income tax. For tax periods beginning on or after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets placed in service after September 10, 2001, but before January 1, 2005 May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets placed in service after September 10, 2001, but before January 1, 2005 May 6, 2003, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Taxpayer purchased a \$100,000 qualifying asset on January 1, 2002, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2002. For Iowa purposes, taxpayer must use

REVENUE DEPARTMENT[701](cont'd)

the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2002. Therefore, a \$24,000 (\$44,000 – \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2002.

EXAMPLE 2: Taxpayer purchased a \$1,000,000 qualifying asset on January 1, 2002, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2005, for \$500,000. Using the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2002-2005. This results in a basis for this asset of \$322,560 (\$1,000,000 – \$677,440), and a gain of \$177,440 (\$500,000 – \$322,560) on the federal return for 2005 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2002-2005. This results in a basis for this asset of \$460,800 (\$1,000,000 – \$539,200), and a gain of \$39,200 (\$500,000 – \$460,800) on the Iowa return for 2005 on the sale of the asset. Therefore, a decrease to net income of \$138,240 (\$177,440 – \$39,200) relating to this gain adjustment must be made on the Iowa return for 2005.

For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, is applicable for Iowa corporation income tax. The depreciation deduction allowed on the Iowa corporation income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets placed in service after May 5, 2003, but before January 1, 2005.

This rule is intended to implement Iowa Code section 422.35 as amended by 2003 2004 Iowa Acts, *First Extraordinary Session*, Senate House File 442 2581, section 40.

ITEM 4. Amend 701—53.23(422) as follows:

701—53.23(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, ~~does not apply~~ *is applicable* for Iowa corporation income tax. *The Section 179 expensing allowance on the Iowa corporation income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. The expensing allowance is limited to \$100,000 for federal tax purposes, but the expensing allowance is limited to \$25,000 for Iowa tax purposes. Taxpayers who claim an expensing allowance on their federal income tax return in excess of \$25,000 must limit their deduction on the Iowa return to \$25,000. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision set forth in Section 168(k).*

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both the Section 179 expense allowance and related depreciation, along with the gain or loss on the sale of qualifying assets placed in service on or after January 1, 2003, but before January 1, 2006, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Taxpayer purchased a \$110,000 qualifying asset on January 1, 2003, which has a five-year life for depreciation purposes. Taxpayer was entitled to a \$100,000 Section 179 expensing allowance, a \$5,000 bonus depreciation deduction under Section 168(k) of the Internal Revenue Code, and an additional depreciation deduction under Section 168 of the Internal Revenue Code for a total deduction of \$106,000 for federal tax purposes. For Iowa purposes, taxpayer is entitled to a \$25,000 Section 179 expensing allowance and a \$17,000 depreciation deduction using MACRS, for a total Iowa deduction of \$42,000. Therefore, a \$64,000 (\$106,000 – \$42,000) increase to net income relating to this Section 179 and depreciation adjustment must be made on the Iowa return for 2003.

EXAMPLE 2: Assume the same facts as given in Example 1, and the qualifying asset was sold on December 31, 2005, for \$50,000. Taxpayer would have claimed \$108,560 of Section 179 and depreciation deductions on the federal returns for 2003-2005. This results in a basis for this asset of \$1,440 (\$110,000 – \$108,560), and a gain of \$48,560 (\$50,000 – \$1,440) on the federal return for 2005 on the sale of the asset.

Taxpayer would have claimed \$85,520 of Section 179 and depreciation deductions using the Section 179 limit of \$25,000 and the MACRS depreciation method on the Iowa returns for 2003-2005. This results in a basis for this asset of \$24,480 (\$110,000 – \$85,520), and a gain of \$25,520 (\$50,000 – \$24,480) on the Iowa return for 2005 on the sale of the assets. Therefore, a decrease to net income of \$23,040 (\$48,560 – \$25,520) relating to this gain adjustment must be made to the Iowa return for 2005.

This rule is intended to implement Iowa Code section 422.35 422.32 as amended by 2004 Iowa Acts, *First Extraordinary Session*, House File 2581, section 39.

ITEM 5. Amend rule 701—59.23(422) as follows:

701—59.23(422) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance (“bonus depreciation”) of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa franchise tax. For tax periods beginning on or after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, does not apply for Iowa franchise income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets placed in service after September 10, 2001, but before January 1, 2005 May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of

REVENUE DEPARTMENT[701](cont'd)

these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets placed in service after September 10, 2001, but before January 1, 2005 May 6, 2003, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, is applicable for Iowa franchise tax. The depreciation deduction allowed on the Iowa franchise tax return is the same as the depreciation deduction allowed on the federal income tax return for assets placed in service after May 5, 2003, but before January 1, 2005.

This rule is intended to implement Iowa Code sections ~~section 422.35 and 422.61~~ as amended by 2003 2004 Iowa Acts, *First Extraordinary Session, Senate House File 442 2581, section 40, and Iowa Code section 422.61.*

ITEM 6. Amend rule 701—59.24(422) as follows:

701—59.24(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, ~~does not apply~~ *is applicable* for Iowa franchise tax. *The Section 179 expensing allowance on the Iowa franchise tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. The expensing allowance is limited to \$100,000*

~~for federal tax purposes, but the expensing allowance is limited to \$25,000 for Iowa tax purposes. Taxpayers who claim an expensing allowance on their federal income tax return in excess of \$25,000 must limit their deduction on the Iowa return to \$25,000. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).~~

~~If any such property was sold or disposed of during the tax year, the applicable Section 179 and related depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.~~

~~The adjustment for both the Section 179 expense allowance and related depreciation, along with the gain or loss on the sale of qualifying assets placed in service on or after January 1, 2003, but before January 1, 2006, can be calculated on Form IA 4562A.~~

~~See rule 701—53.23(422) for examples illustrating how this rule is applied.~~

This rule is intended to implement Iowa Code *section 422.32 as amended by 2004 Iowa Acts, First Extraordinary Session, House File 2581, section 39, and sections 422.35 and 422.61.*

[Filed Emergency 9/24/04, effective 9/24/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3740B**CAPITAL INVESTMENT BOARD,
IOWA[123]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts amendments to Chapter 2, "Tax Credit for Investments in Qualifying Businesses and Community-Based Seed Capital Funds," and Chapter 3, "Tax Credit for Investments in Venture Capital Funds," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVII, No. 4, p. 249, on August 18, 2004, as **ARC 3595B**.

Item 1 amends rule 123—2.1(15E) to provide that investments made on or after January 1, 2004, by entities other than individuals to a qualifying business can qualify for the tax credit.

Item 2 amends rule 123—2.2(15E) to change the definitions of "community-based seed capital fund" and "investor" to provide that community-based seed capital funds require only \$125,000 of capital commitments and no fewer than five investors, and that investors in qualifying businesses can now be entities other than individuals.

Item 3 amends rule 123—2.3(15E) to provide that, for investments made in qualifying businesses on or after January 1, 2004, investors can be entities other than individuals and still qualify for a tax credit.

Item 4 amends subrule 2.5(2) to provide additional time for a community-based seed capital fund to request certification from the Board based on the reduced amount of capital commitments required.

Item 5 amends rule 123—2.9(15E) to provide that a community-based seed capital fund has to invest at least 33 percent of its investment capital in one or more separate qualifying businesses.

Item 6 updates an implementation clause.

Item 7 amends rule 123—3.1(15E) to provide that an investor cannot claim a tax credit for the same investment in a venture capital fund and in a qualifying business.

Item 8 updates an implementation clause.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 17, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement chapter 15E as amended by 2004 Iowa Acts, Senate File 443.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.1 to 2.3, 2.5(2), 2.9, 3.1] is being omitted. These amendments are identical to those published under Notice as **ARC 3595B**, IAB 8/18/04.

[Filed 9/24/04, effective 11/17/04]
[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3738B**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby amends Chapter 12, "Iowa Tuition Grant Program," Iowa Administrative Code.

The adopted amendments modify the requirements colleges and universities must meet to be eligible to participate in the Tuition Grant Program as mandated by the Iowa General Assembly. Specifically, the changes require participating colleges and universities to be accredited by the North Central Association of Colleges and Schools (NCA), be tax exempt under Section 501(c)(3) of the Internal Revenue Code (or have been eligible to participate during the 2003-04 academic year), and provide matching institutional funds as specified by Iowa law.

Notice of Intended Action was published in the June 23, 2004, Iowa Administrative Bulletin as **ARC 3431B**. Comments were received from two Iowa college officials; however, no changes were made in the proposed amendments as a result of these comments. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 21, 2004, meeting of the Iowa College Student Aid Commission.

These amendments will become effective November 17, 2004.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [12.1(5), 12.2(1) to 12.2(3), 12.2(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 3431B**, IAB 6/23/04.

[Filed 9/24/04, effective 11/17/04]
[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3737B**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby amends Chapter 37, "License Sanction Program," Iowa Administrative Code.

The adopted amendments specify that the Commission may apply administrative wage garnishment procedures established under the federal Higher Education Act of 1965, as amended and codified in 20 U.S.C. § 1071 et seq., in the collection of all delinquent student loans owed to the Commission, specifically including private Partnership Loans authorized for collection under Iowa Code section 261.38. The

COLLEGE STUDENT AID COMMISSION[283](cont'd)

adopted amendments also change the chapter name from "License Sanction Program" to "Student Loan Debt Collection."

Notice of Intended Action was published in the August 18, 2004, Iowa Administrative Bulletin as **ARC 3585B**. No comments were received from the public. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the Executive Director on September 22, 2004.

These amendments will become effective November 17, 2004.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 37] is being omitted. These amendments are identical to those published under Notice as **ARC 3585B**, IAB 8/18/04.

[Filed 9/24/04, effective 11/17/04]

[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3732B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

This amendment modifies the requirements for the special education consultant, which is a support personnel position that assists instructional programs for pupils who require special education services.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3542B**. A public hearing on the amendment was held on August 10, 2004. Four persons attended the public hearing, and one written comment was received in support of the amendment. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective November 17, 2004.

The following amendment is adopted.

Amend subrule 15.3(1) as follows:

15.3(1) Special education consultant.

a. Authorization. The holder of this endorsement is authorized to serve as a special education consultant. ~~This support personnel~~ *The consultant* provides ongoing assistance to instructional programs for pupils requiring special education.

~~Consultant endorsements are available in mental disabilities, behavioral disorders, learning disabilities, physical disabilities, hearing impaired, visually impaired, early childhood special education, multicategorical resource room mildly handicapped. The early childhood special education consultant endorsement allows the individual to provide services to programs with pupils below the age of 7.~~

~~All other consultants~~ *A consultant* can serve programs with pupils from ~~age 5 birth to the age of 21~~ (and to a maximum allowable age in accordance with Iowa Code section 256B.8) ~~with the exception of consultants serving deaf or hard-of-hearing or visually disabled students. Applicants who desire to serve as consultants serving deaf or hard-of-hearing or visually disabled students must hold the respective special education instructional endorsement. The deaf or hard-of-hearing consultant endorsement or the visually disabled consultant endorsement allows the individual to serve students from birth to the age of 21.~~

b. Program requirements.

(1) Degree—master's.

1. Option 1: Master's in special education in an endorsement area listed under rule 15.2(272).

2. Option 2: Master's in another area of education plus ~~30 graduate semester hours an endorsement in at least one special education (instructional) area. These hours may have been part of, or in addition to, the degree requirements.~~

(2) Content: ~~This sequence~~ *The coursework* is to be at least eight graduate semester hours to include the following:

1. Curriculum development design.

2. Consultation process in special or regular education:

(a) • Examination, analysis, and application of a methodological model for consulting with teachers and other adults involved in the educational program.

(b) • Interpersonal relations, interaction patterns, interpersonal influence, and communication skills.

3. Skills required for conducting a needs assessment, delivering staff in-service needs, and evaluating in-service sessions.

c. Other.

~~(1) Meet the requirements for the special education teaching endorsement congruent with the consultant authorization desired.~~

~~(2) Four~~ *An applicant must have four years of successful teaching experience, two of which must be congruent with the consultant authorization desired in special education.*

[Filed 9/24/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3733B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

This amendment modifies the requirements for the director of special education, which include competencies rather than coursework and various options to meet the new requirements. The amendment also clarifies the authorization to include the "director of special education of an area education agency."

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3543B**. A public hearing on the amendment was held on August 10, 2004. Two persons attended the public hearing, and one writ-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

ten comment was received in support of the amendment. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective November 17, 2004.

The following amendment is adopted.

Amend subrule 15.3(11) as follows:

15.3(11) Director of special education of an area education agency.

a. Authorization. The holder of this endorsement is authorized to serve as a director of special education of an area education agency. Assistant directors, special education coordinators and other equivalent types of positions are also required to hold this endorsement.

b. Program requirements.

(1) Degree. Specialist or its equivalent: A master's degree plus at least 32 semester hours of planned graduate study in administration or special education beyond the master's degree.

(4) (2) Endorsement. Hold or meet the requirements for supervisor of special education—instructional endorsement (refer to subrule 15.3(5)) or support (refer to subrule 15.3(10)); one of the following:

1. PK-12 principal and PK-12 supervisor of special education (see rule 282—14.142(272));

2. Supervisor of special education—instructional (see subrule 15.3(5));

3. Supervisor of special education—support (see subrule 15.3(10)); or

4. A letter of authorization for special education supervisor issued prior to October 1, 1988.

(2) (3) Content. ~~The program shall include a minimum of 32 graduate semester hours, 16 semester hours of which are outlined under supervisor of special education—instructional or support. Completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements to include the following:~~

1. ~~Foundations of school administration~~ Knowledge of federal, state and local fiscal policies related to education.

2. ~~School finance~~ Knowledge of school plant/facility planning.

3. ~~School law~~ Knowledge of human resources management, including recruitment, personnel assistance and development, evaluations and negotiations.

4. ~~School-community relations~~ Knowledge of models, theories and philosophies that provide the basis for educational systems.

5. ~~Electives in educational administration, special education, school psychology, speech/language pathology, audiology, and school social work so that the program totals 32 graduate semester hours~~ Knowledge of current issues in special education.

6. ~~Evaluator approval component~~ Knowledge of special education school law and legislative and public policy issues affecting children and families.

7. Knowledge of the powers and duties of the director of special education of an area education agency as delineated in Iowa Code section 273.5.

8. Practicum in administration and supervision of special education programs.

(4) Experience. The applicant must have three years of administrative experience as a PK-12 principal or PK-12 supervisor of special education.

(5) Competencies. Through completion of a sequence of courses and experiences which may have been part of, or in

addition to, the degree requirements, the director of special education accomplishes the following:

1. Facilitates the development, articulation, implementation and stewardship of a vision of learning that is shared and supported by the school community.

2. Advocates, nurtures and sustains a school culture and instructional program conducive to student learning and staff professional growth.

3. Ensures management of the organization, operations and resources for a safe, efficient and effective learning environment.

4. Collaborates with educational staff, families and community members; responds to diverse community interests and needs; and mobilizes community resources.

5. Acts with integrity, fairness, and in an ethical manner.

6. Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

7. Collaborates and assists in supporting integrated work of the entire agency.

c. Other.

(1) Option 1:

Instructional. Meet the requirements for one special education teaching endorsement to include at least two of the following levels: and have three years of teaching experience in special education.

1. ~~Early childhood—special education.~~

2. ~~K-6.~~

3. ~~7-12.~~

(2) Option 2:

Support. Meet the practitioner licensure requirements for one of the following endorsements and have three years of teaching experience as a:

1. School audiologist; ;

2. School psychologist; ;

3. School social worker; ; or

4. Speech-language pathologist.

An individual holding a statement of professional recognition is not eligible for the director of special education of an area education agency endorsement.

[Filed 9/24/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3731B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

This amendment regarding the school social worker statement of professional recognition (SPR) is necessary to align with the appropriate class of licensure issued by the Iowa Board of Social Work Examiners and the recent changes that were made in that Board's rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3541B**. A public hearing on the amendment was held on August 10, 2004. Two persons attended the public hearing, and two

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

written comments were received in support of the amendment. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective November 17, 2004.

The following amendment is adopted.

Amend subrule 15.3(15) as follows:

15.3(15) School social worker.

a. Authorization. ~~The holder of this endorsement~~ *An individual who meets the requirements of paragraph 15.3(15)“b” or 15.3(15)“c”* is authorized to serve as a school social worker to pupils from birth to the age of 21 (and to a maximum allowable age in ~~accord~~ *accordance* with Iowa Code section 256B.8).

Option 1:

b. ~~Option 1. Program Endorsement~~ requirements. Master's degree in social work from an accredited school of social work to include a minimum of 20 semester hours of coursework (including practicum experience) which demonstrates skills, knowledge, and competencies in the following areas:

(1) Social work: Study and knowledge in the following three areas:

1. Assessment (e.g., social, emotional, behavioral, and familial, ~~etc.~~).

2. Intervention (e.g., individual, group, *and* family counseling, ~~etc.~~).

3. Related studies (e.g., community resource coordination, multidiscipline teaming, organizational behavior, *and* research, ~~etc.~~).

(2) Education: Study and knowledge in the following areas:

1. General education (e.g., school law, foundations of education, methods, psychoeducational measurement, behavior management, child development, ~~etc.~~).

2. Special education (e.g., exceptional children, psychoeducational measurement, behavior management, special ~~educational~~ *education* regulations, counseling school age children, ~~etc.~~).

3. Practicum experience: ~~The program shall include an A practicum~~ experience in a school setting under the supervision of an experienced school social work practitioner *is required*. The practicum shall include experiences *that lead to the development of professional identity and the disciplined use of self. These experiences will include:* in assessment; , direct services to children and families; , consultation; , staffing, community liaison and documentation; ~~which leads to the development of professional identity and the disciplined use of self~~. If a person has served two years as a school social worker, the practicum experience can be waived.

4. Completion of an approved human relations component.

5. The program must include preparation that contributes to the education of ~~the handicapped and the students with disabilities and students who are~~ gifted and talented.

c. Option 2: Statement of professional recognition (SPR).

The special education director (or designee) of the area education agency *or local education agency* must submit a letter *an application* requesting that the authorization be issued. ~~Additionally, an official transcript reflecting the mas~~

~~ter's in social work must be included. If a person qualifies for a regular license, that must also be submitted. A temporary SPR will then be issued for one school year. An approved human relations course must be completed before the start of the next school year. The applicant must provide evidence that the human relations component has been fulfilled within the required time frame. The application must include:~~

~~(1) An official transcript that reflects the master's degree in social work; and~~

~~(2) The licensed independent social worker (LISW) or licensed master social worker (LMSW) license issued by the Iowa board of social work examiners.~~

~~A temporary SPR will be granted for two additional school years to allow the person time to complete the two years' supervised practice experience that are required before taking the social work license examination and to allow sufficient time to complete successfully the examination and be issued the license. At the end of the third school year, the applicant must submit a copy of a social work license issued by the Iowa department of public health.~~

[Filed 9/24/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3727B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 1, "Administration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 12, 2004, as **ARC 3342B**.

This rule is intended to provide guidance to licensed professional engineers, other design professionals, unlicensed persons engaged in various aspects of building construction, building officials, owners, and others on when the services of a licensed professional engineer are required or may not be required in connection with new building construction and alterations to existing structures.

There has been one nonsubstantive change from the Notice. In subrule 1.5(7), the word "exemption" was changed to "exception" wherever it appears, in order to coincide with Iowa Code section 544A.18.

This rule was adopted by the Board on September 23, 2004.

This rule shall become effective November 17, 2004.

This rule is intended to implement Iowa Code sections 542B.2(8) and 542B.27(1).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

this rule [1.5] is being omitted. With the exception of the change noted above, this rule is identical to that published under Notice as **ARC 3342B**, IAB 5/12/04.

[Filed 9/24/04, effective 11/17/04]
[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3728B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 7, "Professional Development," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3471B**. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to clarify the Board's rule regarding criteria for reduction of the continuing education requirement for renewal of licensure and to make the rule more consistent with Iowa Code chapter 272C.

This amendment was adopted by the Board on September 23, 2004.

This amendment shall become effective November 17, 2004.

This amendment is intended to implement Iowa Code sections 272C.2, 272C.3, 542B.6 and 542B.18.

The following amendment is adopted.

Amend rule 193C—7.6(542B,272C) as follows:

193C—7.6(542B,272C) Exemptions. The continuing education requirements may be reduced in proportion to the following:

1. Periods of time ~~exceeding 120 consecutive days~~ that the licensee serves honorably on active duty in the military services;
2. Periods of time that the licensee is licensed in *and a resident of* another state or district having continuing education requirements for professional engineering or land surveying ~~equal to or more stringent than the requirements of these rules~~ and meets all requirements of that state or district for practice therein;
3. Periods of time ~~exceeding 120 consecutive days~~ that the licensee is ~~an employee working as a professional engineer or land surveyor and assigned to duty outside the United States of America~~ *a government employee working as a professional engineer or land surveyor and assigned to duty outside the United States; or*
4. *Documented periods of the licensee's active practice and absence from the United States that are approved by the board.*

No exemption will be granted without a written request from the licensee with documentation of the period of absence.

[Filed 9/24/04, effective 11/17/04]
[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3724B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6, 235A.14(1), and 235B.5(1), the Department of Human Services amends Chapter 7, "Appeals and Hearings," and Chapter 175, "Abuse of Children," Iowa Administrative Code.

These amendments remove provisions requiring a Department reconsideration of a child abuse report or a dependent adult abuse report when a subject of the report seeks correction or expungement of the abuse information. The Department has received complaints about the length of time required to complete the review and appeal process. Under these amendments, a person who requests correction or expungement of abuse information will be advised to file a request for an appeal hearing under 441—Chapter 7.

The amendments also make technical changes to update organizational references and addresses in Chapter 175.

These amendments do not provide for waivers in specified situations because they benefit the persons affected by shortening the process for resolving disputes about the accuracy of abuse information and because they make technical changes. Individuals may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3547B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 3548B** on the same date to solicit public comment. The Department received no comments on the Notice of Intended Action.

The Department has made one change to the Notice of Intended Action. An amendment to subrule 175.31(2) has been added to delete the following sentence: "The subject may appeal the content of the child protective assessment summary only if the request for correction of the child protective assessment summary is denied." This sentence requires a second Department decision on the content of the abuse assessment summary before an appeal hearing is scheduled. That requirement is contrary to the intent of these amendments. This amendment was inadvertently omitted from the Notice of Intended Action. It does not change the scope or effect of the Notice of Intended Action. The Department continues to have the option to amend the assessment summary, but a review is not required.

The Council on Human Services adopted these amendments on September 15, 2004.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement Iowa Code chapter 17A and sections 235A.19 and 235B.10.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)** as follows:

Amend the definition of “aggrieved person,” numbered paragraph “8,” as follows:

8. For the child or *dependent* adult abuse registry, juvenile sex offender registry or criminal records *record* check evaluation, a person:

- Who has been ~~denied expungement or requested~~ correction of child abuse or *dependent* adult abuse registry information.

- Who has been restricted *from* or denied employment in a health care facility, state institution, or other facility based on a record check. “Employment” includes, but is not limited to, service as an employee, a volunteer, a provider, or a contractor. “Facilities” include, but are not limited to, county or multicounty juvenile detention homes and juvenile shelter care homes, child-placing agencies, substance abuse treatment programs, group living foster care facilities, child development homes, child care centers, state resource centers, mental health institutes, and state training schools.

- Who is contesting a risk assessment decision as provided in rule 441—103.34(692A) by alleging that the risk assessment factors have not been properly applied, the information relied upon to support the assessment findings is inaccurate, or the procedures were not correctly followed.

Amend the definition of “reconsideration” as follows:

“Reconsideration” means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through the Iowa Foundation for Medical Care, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, Medicaid patient management services, the managed health care review committee, a division or bureau within the department, the mental health and developmental disabilities commission, ~~the child or adult abuse registry~~, or a licensed health care professional as specified in 441—paragraph 9.9(1)“i.” Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

ITEM 2. Amend **441—Chapter 175**, Division II, title, as follows:

DIVISION II

CHILD ABUSE ASSESSMENT ~~PILOT PROJECTS~~

ITEM 3. Amend subrule 175.31(2) as follows:

175.31(2) Notification of completion of assessment and right to request correction. Written notice shall be provided to all subjects of a child abuse assessment and to the mandatory reporter who made the report of child abuse which indicates that the child abuse assessment is completed. Both custodial and noncustodial parents shall be notified if their whereabouts are known.

a. The notice shall contain information concerning the subject’s rights to request correction and appeal rights. The subject may request correction of the information contained within the child protective assessment summary if the subject disagrees with the information. ~~The subject may appeal the content of the child protective assessment summary only if the request for correction of the child protective assessment summary is denied.~~

b. If the child protective assessment ~~summary~~ results in a determination that abuse is confirmed, the notice shall indicate the type of abuse, name of the child and name of the person responsible for the abuse and whether the report has been placed on the registry.

ITEM 4. Amend subrule **175.40(3)** as follows:

Amend paragraph “a” as follows:

a. A record check evaluation is being completed for licensing, registration, or employment or residence in a child care facility. If the department worker completing the record check evaluation determines the case does not meet the criteria specified in Iowa Code Supplement subsection 232.71D(3) and, therefore, should be expunged from the central abuse registry, the department worker shall provide copies of the written report and Form 470-2310, Record Check Evaluation, to the Department of Human Services, Chief, Bureau of Program Support and Protective Services, ~~Retroactive Review, Hoover State Office Building, Des Moines, Iowa 50319-0114~~ *bureau of protective services*.

(1) Within 30 days the bureau chief shall determine if the report is to be expunged from the central abuse registry and shall notify the ~~regional administrator~~ *service area manager* or designee in writing of that decision and the time frame for retention or expungement of the report. The bureau chief or designee shall notify the person on whom the review was completed of the decision to expunge the case from the central abuse registry.

(2) If the department determines that the case is to be expunged from the central abuse registry, no record check evaluation is necessary and the department shall notify the requester.

(3) If the department determines that the case does meet the criteria for placement on the central abuse registry, the department shall proceed with the record check evaluation procedure.

Rescind and reserve paragraph “b.”

ITEM 5. Amend subrule **175.42(3)** as follows:

Amend paragraph “a” as follows:

a. The supervisor of the central abuse registry shall designate a person to be the single point of contact (SPOC) for all research proposals requesting child abuse information or involving department staff who provide child protective services. All proposals shall be routed to the SPOC at the Division of Adult, Children and Family Services, Department of Human Services, ~~Hoover State Office Building 1305 E. Walnut Street, Des Moines, Iowa 50319-0114~~.

Amend paragraph “b,” subparagraphs (4) and (5), as follows:

(4) Representatives from the field, including a ~~regional administrator~~ *service area manager* or designee and one representative from a ~~region~~ *service area*, appointed by the ~~regional administrator~~ *service area manager*, if a specific ~~region~~ *service area* is involved.

(5) A representative from the department’s division of data management ~~information~~, when the proposal involves use of one of the department’s computerized data systems.

[Filed 9/23/04, effective 11/17/04]

[Published 10/13/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3721B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 234.6(7) and 239B.4(4) and 2004 Iowa Acts, House File 2350, section 12, the Department of Human Services amends Chapter 9, "Public Records and Fair Information Practices," Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

These amendments:

- Rescind truancy sanction requirements in the Family Investment Program. The statutory basis for these requirements was rescinded effective July 1, 2004, by 2004 Iowa Acts, House File 2350, sections 5 through 11. Family Investment Program recipients continue to be subject to the same school attendance requirements and penalties for truancy as all other Iowa families.
- Allow the disregard of one motor vehicle when determining Family Investment Program or Food Assistance eligibility, without regard to the vehicle's value.
- State the current value of the partial disregard used in determining Family Investment Program eligibility if an adult or working teenager in the household has another vehicle. This value increases annually based on the consumer price index for used vehicles.

These amendments do not provide for waivers in specified situations because they increase benefits for or remove restrictions on affected households.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3466B**. Notice of Intended Action for these amendments was also published in the Iowa Administrative Bulletin as **ARC 3456B** on the same date to allow for public comment. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 15, 2004.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement Iowa Code sections 239B.7 and 239B.2A as amended by 2004 Iowa Acts, House File 2350, sections 1 and 11, respectively.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [9.1(20), 40.27(5), 41.25(8), 41.26(1)"d," 41.27(9)"d," 65.30(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 3456B** and Adopted and Filed Emergency as **ARC 3466B**, IAB 7/7/04.

[Filed 9/23/04, effective 11/17/04]
[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3715B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2004 Iowa Acts, Senate File 2298, sections 119 and 143, the Department of Human Services amends Chapter 9, "Public Records and Fair Information Practices," and Chapter 76, "Application and Investigation," Iowa Administrative Code.

These amendments implement a program with insurance carriers to match lists of insured persons against the list of Medicaid recipients to identify third-party payers for the costs of medical care. Medicaid recipients who have other health insurance coverage are required to use that coverage first before billing the Medicaid program. The amendments require insurance carriers that provide a health benefit plan in Iowa to enter into an agreement with the Department to provide the data necessary to carry out the match and specify the terms of the agreement.

These amendments were Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3546B**. Notice of Intended Action for these amendments was also published in the Iowa Administrative Bulletin as **ARC 3545B** on August 4, 2004, to solicit public comment. The Department received no comments on the Notice of Intended Action.

The Department has made one addition to the Notice of Intended Action, amending 441—paragraph 9.12(2)"b" to add a new subparagraph referencing this data match. The Iowa Fair Information Practices Act requires agencies to adopt rules listing the data processing matching of personally identifiable information carried out by the agency. This technical amendment was inadvertently omitted from the Notice of Intended Action. It does not change the scope or effect of the Notice of Intended Action in any way. New subparagraph 9.12(2)"b"(9) reads as follows:

"(9) The Medicaid management information system matches data on medical assistance recipients against data on insureds that is submitted by insurance carriers under rule 441—76.13(249A) in order to identify third-party payers for medical assistance recipients."

The Department also removed the identifying information about the Department that was included in paragraphs 4 and 14 of the agreement form in subrule 76.13(2), since this information is subject to change over time and is not necessary to illustrate the form of the agreement.

These amendments do not provide for waivers in specified situations because all health insurers should be required to provide the data necessary to enable the Department to match insureds against Medicaid recipients and identify third-party payers for Medicaid recipients.

The Council on Human Services adopted these amendments on September 15, 2004.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement Iowa Code section 249A.3, subsection 10, and 2004 Iowa Acts, Senate File 2298, section 119.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [9.12(2)"b"(9), 76.13] is being omitted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3545B** and Adopted and Filed Emergency as **ARC 3546B**, IAB 8/4/04.

[Filed 9/23/04, effective 11/17/04]
[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3716B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments update rules for Medicaid reimbursement methodology for inpatient and outpatient hospital care related to payments for direct and indirect medical education and disproportionate share in state fiscal year 2005. The amounts allocated for these purposes remain the same as in state fiscal year 2004. The amendments also make several other technical changes to Chapter 79.

These amendments do not provide for waivers in specified situations because the changes are technical in nature.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3462B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 3453B** on the same date to solicit comment. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 15, 2004.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are adopted.

ITEM 1. Amend paragraph **79.1(1)“c,”** third unnumbered paragraph, as follows:

~~Copies of fee~~ *Fee* schedules in effect for the providers covered by fee schedules can be obtained by ~~contacting from the department's fiscal agent Web site at the following address: Consultec, Inc., P.O. Box 14422, Des Moines, Iowa 50306-3422; <http://www.dhs.state.ia.us/Medicaid/MedicaidFeeSched.asp>.~~

ITEM 2. Amend subrule **79.1(2)**, provider category "prescribed drugs," as follows:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|--------------------------|-------------------------------|--|
| Prescribed drugs | See 79.1(8) | \$5.17 \$4.26 dispensing fee. (See 79.1(8)“a” and “e”) |

ITEM 3. Amend subrule **79.1(5)** as follows:

Amend paragraph **“r,”** subparagraph (1), as follows:

(1) Certification procedure. All hospital special units and physical rehabilitation hospitals must be certified by the Medicaid fiscal agent to qualify for Medicaid reimbursement as a special unit or physical rehabilitation hospital. Hospitals shall submit requests for certification to ACS ~~Consultec~~ *State Healthcare*, Attention: Provider Enrollment, P.O. Box 14422, Des Moines, Iowa 50306-3422, with documentation that the certification requirements are met. The Medicaid fiscal agent will notify the facility of any additional documentation needed after review of the submitted documentation.

Amend paragraph **“y,”** subparagraphs (2), (5), and (8), as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(5)“y”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to inpatient services for July 1, 2003 2004, through June 30, 2004 2005, is \$8,065,366.

(5) Allocation to fund for indirect medical education. Except as reduced pursuant to subparagraph 79.1(5)“y”(6), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for indirect medical education for July 1, 2003 2004, through June 30, 2004 2005, is \$14,161,431.

(8) Allocation to fund for disproportionate share. The total amount of funding that is allocated to the graduate medical education and disproportionate share fund for disproportionate share payments for July 1, 2003 2004, through June 30, 2004 2005, is \$6,769,557.

ITEM 4. Amend subrule **79.1(16)** as follows:

Amend paragraph **“a,”** definition of “grouper,” as follows:

“Grouper” shall mean the Version 2 4.1 Grouper software developed by Minnesota Mining and Manufacturing (3M) for the Health Care Financing Administration, with modifications for payable APGs made to support Medicaid program policy in Iowa. (See paragraph “i.”)

Amend paragraph **“i,”** fourth unnumbered paragraph, as follows:

Claims for the following APGs, as defined in Version 2 4.1 of the Grouper software, will not be accepted by Iowa Medicaid for payment: APG 005—Nail Procedures, APG 171—Artificial Fertilization, APG 212—Fitting of Contact Lenses, APG 386—Biofeedback and hypnotherapy, and APG 382—Provision of vision aids.

Amend paragraph **“v,”** subparagraph (2), as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(16)“v”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to outpatient services for July 1, 2003 2004, through June 30, 2004 2005, is \$2,727,424.

ITEM 5. Amend subrule 79.14(1) as follows:

Amend the introductory paragraph as follows:

79.14(1) Application forms. All providers of medical services interested in enrolling as Medicaid providers shall begin the enrollment process by contacting the fiscal agent at Provider Enrollment, *CONSULTEC, Inc. ACS State Healthcare*, P.O. Box 14422, Des Moines, Iowa 50306-3422, to request an application, with the following exceptions: nursing facility providers shall complete the process set forth in rule 441—81.13(249A) and intermediate care facilities for the mentally retarded shall complete the process set forth in rule 441—82.3(249A). *CONSULTEC The fiscal agent* shall send the provider the appropriate application forms for completion as set forth below.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend paragraph “e” as follows:

e. All HCBS waiver providers shall submit Form 470-2917, Medicaid HCBS Provider Application, at least 90 days before the planned service implementation date. *Consultee The fiscal agent* shall forward the application to the department for processing.

[Filed 9/23/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3717B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2004 Iowa Acts, Senate File 2298, section 138, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments implement changes in Medicaid reimbursement for nursing facility services as directed by 2004 Iowa Acts, Senate File 2298. This legislation mandates the

following changes to the methodology for the calculation of nursing facility payments in the modified price-based case-mix reimbursement system:

- Adjusting allowable cost calculations by applying the most recently published HCFA/SNF index.

- Reducing the excess payment allowance calculations. These amendments do not provide for waivers in specified situations because they benefit all affected providers.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3463B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 3454B** on the same date to solicit comment. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 15, 2004.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement 2004 Iowa Acts, Senate File 2298, sections 138 and 154.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category “nursing facilities,” numbered paragraphs “1” and “2,” as follows:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|--|--|--|
| 1. Nursing facility care | Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16)“d”(1)“1” and (2)“1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is 100% 50%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16)“d”(1)“2” and (2)“2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance limit is 65% 32.5%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median. | See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16)“f.” The direct care rate component limit under 441—81.6(16)“f”(1) and (2) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16)“f”(1) and (2) is 110% of the patient-day-weighted median. |
| 2. Hospital-based, Medicare-certified nursing care | Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16)“d”(3)“1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is 100% 50%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16)“d”(3)“2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance limit is 65% 32.5%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median. | See 441—subrules 81.6(4) and 81.6(14), and paragraph 81.6(16)“f.” The direct care rate component limit under 441—81.6(16)“f”(3) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16)“f”(3) is 110% of the patient-day-weighted median. |

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule **81.6(16)** as follows:

Amend paragraph "**a**," introductory paragraph, as follows:

a. Calculation of per diem cost. For purposes of calculating the non-state-owned nursing facility Medicaid reimbursement rate and the Medicare-certified hospital-based nursing facility Medicaid reimbursement rate, the costs shall be divided into two components, the direct care component and non-direct care component as defined in rule 441—81.1(249A). Each nursing facility's per diem allowable direct care and non-direct care cost shall be established. Effective July 1, 2001, and every second year thereafter, the per diem allowable cost shall be arrived at by dividing total reported allowable costs by total inpatient days during the reporting period. Effective *On July 1, 2001, July 1, 2003, July 1, 2004, July 1, 2005*, and every second year thereafter, total reported allowable costs shall be adjusted using the inflation factor specified in subrule 81.6(18) from the midpoint of the cost report period to the beginning of the state fiscal year rate period.

Amend paragraph "**c**" by adopting the following new subparagraph (3):

(3) For the fiscal period beginning July 1, 2004, and ending June 30, 2005, the non-state-owned and Medicare-certified hospital-based nursing facility direct care and the non-direct care patient-day-weighted medians calculated July 1, 2003, shall be inflated to July 1, 2004, using the inflation factor specified in subrule 81.6(18).

[Filed 9/23/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3718B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6 and 2004 Iowa Acts, Senate File 2298, section 138, subsection 13, the Department of Human Services amends Chapter 150, "Purchase of Service," and Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments:

- Continue rate limits in effect for Iowa purchase of social service contracts through state fiscal year 2005. These limits affect providers of adoption, shelter care, family planning, and supervised apartment living services. Reimbursement remains frozen at the levels in effect for state fiscal year 2001.
- Continue rate limits in effect for rehabilitative treatment and supportive service contracts through state fiscal year 2005. These limits affect providers of family preservation, family-centered, foster group care, and foster family care services. Reimbursement remains frozen at the levels in effect for state fiscal year 2001. Provisions for renegotiating rates continue to be suspended.

These amendments do not provide for waivers in specified situations because these policies are mandated by 2004 Iowa Acts, Senate File 2298 and House File 2577. The Department has no authority to waive provisions of law.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3459B**. Notice of Intended Action on these

amendments was published in the Iowa Administrative Bulletin as **ARC 3467B** on the same date to solicit comments.

The Department received five comments on these amendments, all illustrating the hardship on providers of living within the same reimbursement rates for three years while the costs of doing business have continued to rise. The Department recognizes the challenge this presents providers. However, the Department does not have the authority or funding to increase rates.

The Council on Human Services adopted these amendments on September 15, 2004. These amendments are identical to those published under Notice of Intended Action.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement 2004 Iowa Acts, Senate File 2298, section 138, subsections 6, 8, and 9.

The following amendments are adopted.

ITEM 1. Amend subparagraph **150.3(5)“p”(2)**, introductory paragraph and numbered paragraphs "**3**" and "**4**," as follows:

(2) For the fiscal year beginning July 1, 2003 *2004*, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption, shelter care, family planning, and supervised apartment living) shall be the same as the rates in effect on June 30, 2003 *2004*, except under any of the following circumstances:

3. For the fiscal year beginning July 1, 2003 *2004*, the combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. The maximum reimbursement rate shall be \$83.69 per day. If the department reimburses the provider at less than the maximum rate, but the provider's cost report justifies a rate of at least \$83.69, the department shall readjust the provider's reimbursement rate to the actual and allowable cost plus the inflation factor or \$83.69, whichever is less.

4. For the fiscal year beginning July 1, 2003 *2004*, the purchase of service reimbursement rate for a shelter care provider's actual and allowable cost plus inflation shall *continue to be increased by \$3.99*. For state fiscal year *2004 2005*, beginning July 1, 2003 *2004*, the established statewide average actual and allowable cost shall *continue to be increased by \$3.99*.

ITEM 2. Amend paragraph **185.112(1)“k”** as follows:

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the ~~time~~ period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the service area manager of the host area based upon the factors delineated at paragraph 185.112(1)“f,” except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, 2004 *2005*.

(2) In accordance with paragraph 185.112(6)“b,” except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, 2004 *2005*.

(3) Rates may be changed when funds are appropriated for an across-the-board increase.

[Filed 9/23/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3719B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6(6), the Department of Human Services amends Chapter 153, "Social Services Block Grant and Funding for Local Services," Iowa Administrative Code.

These amendments change the eligibility and payment provisions under Division IV of the chapter, "State Payment Program for Services to Adults with Mental Illness, Mental Retardation, and Developmental Disabilities," to contain costs. The amendments:

- Limit eligibility for new applications to the State Payment Program after July 1, 2004, to persons whose income is at or below 150 percent of the federal poverty level and whose countable resources are within the limits applied by the federal Supplemental Security Income program.
- Freeze all provider reimbursement rates at the level in effect on June 30, 2004.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3458B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 3451B** on the same date to solicit comments.

The Department received one comment on the Notice of Intended Action. The commenter opposed the rules on the grounds that freezing rates will discourage providers from serving people with "state case" status and that setting eligibility limits that could be more stringent than those imposed on persons with legal settlement in a particular county is inequitable and contrary to the goals set out for the redesign of the mental health service delivery system. The Department recognizes these objections, but sees no better alternatives for keeping program expenditures within the existing appropriation.

These amendments do not provide for waivers in specified situations because necessary savings will not be achieved if waivers are granted. Consumers or providers may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on September 15, 2004. These amendments are identical to those published under Notice of Intended Action.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement 2004 Iowa Acts, Senate File 2298, section 131.

The following amendments are adopted.

ITEM 1. Amend subrule 153.52(1) as follows:

153.52(1) Eligibility criteria. Meet the eligibility criteria established in the approved county management plan for the county where the applicant resides, *except that no person applying for services on or after July 1, 2004, shall be approved whose:*

- a. *Income exceeds 150 percent of the federal poverty level; or*
- b. *Countable resources exceed the maximum allowed under the federal Supplemental Security Income program. The following resources shall be exempted:*
 - (1) *One primary vehicle.*

- (2) *One primary residence.*
- (3) *Burial accounts or agreements.*
- (4) *Retirement accounts in the accumulation stage.*
- (5) *Medical savings accounts.*
- (6) *Assistive technology accounts for persons whose disability requires or may reasonably be expected to require assistive technology.*

ITEM 2. Amend subrule 153.53(2), introductory paragraph, as follows:

153.53(2) Eligibility for services. An applicant shall be determined eligible based on the eligibility guidelines contained in the approved county management plan for the county where the applicant resides. *When an application is filed on or after July 1, 2004, the applicant shall also meet the requirements of subrule 153.52(1).* The department's service worker is responsible for the decision made on eligibility based on the approved county management plan.

ITEM 3. Amend paragraph **153.57(3)"b"** as follows:

b. Payment to a provider with a special mental health, mental retardation county contract agreement for services provided to a member shall be the unit rate paid on November 1, 2001, by the county in which the provider is located for the remainder of state fiscal year 2003, and the unit rate paid by the county in which the provider is located effective July 1, 2003, *except that all rates shall be frozen June 30, 2004.*

(1) Payment to a provider for services to a member whose case is being overseen by the department's service worker and the Iowa Plan shall be at the rate established by the Iowa Plan contractor as of November 1, 2001, for the remainder of state fiscal year 2003, and at the rate established by the Iowa Plan contractor effective July 1, 2003, *except that all rates shall be frozen June 30, 2004.*

(2) Payment to a *new* provider requesting enrollment in a special mental health, mental retardation county contract agreement between January 1, 2003, and June 30, 2003, shall be at the rate paid on November 1, 2001, in state fiscal year 2004 by the county in which the provider is located.

[Filed 9/23/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3720B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 234.6 and 600.22, the Department of Human Services amends Chapter 201, "Subsidized Adoptions," Iowa Administrative Code.

In accordance with 2004 Iowa Acts, Senate File 2298, section 139, these amendments:

- Limit payment for nonrecurring expenses of foreign adoptions and for attorney fees to finalize an adoption to \$500 per child.
- Eliminate subsidy payments for child care except for families that have entered into an agreement including a child care payment before June 30, 2004. Payments for child care under these agreements shall be made in accordance with policies of the Department's Child Care Assistance Program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Child care services are available through the Child Care Assistance Program to families that meet the program's eligibility guidelines.

Exceptions to the policy on maximum payments for child care are authorized by 2004 Iowa Acts, Senate File 2298, section 139. These amendments do not otherwise provide for waivers in specified situations because the Department does not have the authority to waive provisions set in statute.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3457B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 3450B** on the same date to solicit public comment. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 15, 2004.

These amendments shall become effective November 17, 2004, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement 2004 Iowa Acts, Senate File 2298, section 139.

The following amendments are adopted.

ITEM 1. Amend subrule 201.3(2), introductory paragraph, as follows:

201.3(2) A child who enters the United States from another country on the basis of a visa classifying the child as an orphan, in accordance with the Immigration and Naturalization Act, for the purpose of adoption by a specific United States family is not eligible for subsidized adoption maintenance payments, medical assistance, or special services except for nonrecurring expenses. A child entering the country for adoption may be eligible for subsidy for nonrecurring expenses, not to exceed \$2000 \$500, in the following situations:

ITEM 2. Amend paragraph **201.6(1)“a”** as follows:

Rescind subparagraph (4) and adopt the following new subparagraph in lieu thereof:

(4) Child care, if the family has entered into a presubsidy or subsidy agreement on or before June 30, 2004, that contains a provision for child care reimbursement. Child care subsidy payments shall not exceed the maximum rates established in 441—paragraph 170.4(7)“a” for the child's age and type of care, unless the department grants a waiver under rule 441—1.8(17A,217). Child care services are available through the child care assistance program to families that meet the requirements of 441—Chapter 170.

Amend subparagraph (7) as follows:

(7) Attorney fees and court costs necessary to finalize the adoption, limited to \$700 \$500 per child. ~~When two or more children are adopted together, the maximum reimbursement rate shall be \$700 for the first child and \$500 for each additional child.~~ Attorney fees may be paid when the adoptive family has negotiated an Agreement to Future Adoption Subsidy, Form 470-0762.

[Filed 9/23/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3744B**REGENTS BOARD[681]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents on September 15, 2004, adopted amendments to Chapter 3, “Personnel Administration,” Iowa Administrative Code.

These amendments are intended to change numerous references in Chapter 3 from Iowa Code chapter 19A to Iowa Code Supplement chapter 8A.

In addition, rule 3.37(19A) is amended to eliminate the need for an annual public hearing on the pay plan. There is no longer a statutory requirement for a public hearing. The pay plans for union-covered staff are negotiated in the collective bargaining process.

Paragraph 3.104(4)“c” is amended to strike the word “provisional.” This type of appointment was eliminated when Chapter 3 was amended in June 2002. The reference in this paragraph to “provisional” appointment was overlooked at that time.

Notice of Intended Action for these amendments was published in the July 21, 2004, Iowa Administrative Bulletin as **ARC 3494B**. These amendments are identical to those published under Notice of Intended Action.

A waiver provision is not included. The Board has adopted a uniform waiver rule which may be found at 681 IAC 19.18(17A).

These amendments are intended to implement Iowa Code Supplement chapter 8A.

These amendments will become effective on November 17, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 3] is being omitted. These amendments are identical to those published under Notice as **ARC 3494B**, IAB 7/21/04.

[Filed 9/24/04, effective 11/17/04]

[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3746B**REGENTS BOARD[681]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 262.9(12) and 262.12, the Board of Regents on September 15, 2004, adopted amendments to Chapter 11, “Board of Regents Organization and General Rules,” Iowa Administrative Code.

These amendments are intended to do the following:

- Provide information about the president and president pro tem of the Board of Regents.
- Update information regarding Board meeting dates and agendas and note when that information will be distributed.
- Update the address of the Board of Regents' office.
- Distinguish between the policy-making authority of the Board and that of the institutional presidents.

REGENTS BOARD[681](cont'd)

- Clarify who is authorized to establish regent committees and task forces and appoint individuals to those entities, as well as delete specific references to outdated regent committees.
- Incorporate minor edits to enhance readability of the rules.

Notice of Intended Action for these amendments was published in the July 21, 2004, Iowa Administrative Bulletin as **ARC 3495B**. No comments were received on these amendments. These amendments are identical to those published under Notice of Intended Action.

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

These amendments are intended to implement Iowa Code sections 262.9 and 262.12.

These amendments will become effective on November 17, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [11.1] is being omitted. These amendments are identical to those published under Notice as **ARC 3495B**, IAB 7/21/04.

[Filed 9/24/04, effective 11/17/04]
[Published 10/13/04]

[For replacement pages for IAC, see IAC Supplement 10/13/04.]

ARC 3741B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVII, No. 4, p. 268, on August 18, 2004, as **ARC 3596B**.

Item 1 amends subrule 42.18(1) to provide that individuals may receive a tax credit for individual income tax for investments made to a qualifying business by a partnership, S corporation, limited liability company, estate or trust for investments made on or after January 1, 2004.

Item 2 updates an implementation clause.

Item 3 amends subrule 52.21(1) to provide that corporations may receive a tax credit for corporation income tax for investments made to a qualifying business for investments made on or after January 1, 2004.

Item 4 updates an implementation clause.

Item 5 amends subrule 58.11(1) to provide that financial institutions may receive a tax credit for franchise tax for investments made to a qualifying business for investments made on or after January 1, 2004.

Item 6 updates an implementation clause.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 17, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2004 Iowa Acts, Senate File 443.

The following amendments are adopted.

ITEM 1. Amend subrule 42.18(1) as follows:

42.18(1) Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund *or equity investments made in a qualifying business on or after January 1, 2004*, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For equity investments made in a qualifying business *prior to January 1, 2004*, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

ITEM 2. Amend the implementation clause for rule **701—42.18(15E,422)** as follows:

This rule is intended to implement Iowa Code section 15E.43 as amended by 2003 2004 Iowa Acts, ~~chapter 179~~ *Senate File 443*, and sections 15E.51, 15E.66, 422.11F and 422.11G.

ITEM 3. Amend subrule 52.21(1) as follows:

52.21(1) Investment tax credit for an equity investment in a community-based seed capital fund *or qualifying business*. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund *or an equity investment made on or after January 1, 2004, in a qualifying business*, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund *and equity investments made on or after January 1, 2004, in a qualifying business*, an individual may claim the

REVENUE DEPARTMENT[701](cont'd)

credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 4. Amend the implementation clause for rule **701—52.21(15E,422)** as follows:

This rule is intended to implement Iowa Code section 15E.43 as amended by 2003 2004 Iowa Acts, ~~chapter 179 Senate File 443~~, and sections 15E.51, 15E.66, 422.11F and 422.33(13).

ITEM 5. Amend subrule 58.11(1) as follows:

58.11(1) Investment tax credit for an equity investment in a community-based seed capital fund *or qualifying business*. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund *or an equity investment made on or after January 1, 2004, in a qualifying business*, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund *and equity investments made on or after January 1, 2004, in a qualifying business*, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 6. Amend the implementation clause for rule **701—58.11(15E,422)** as follows:

This rule is intended to implement Iowa Code section 15E.43 as amended by 2003 2004 Iowa Acts, ~~chapter 179 Senate File 443~~, and sections 15E.51, 15E.66, 422.11F and 422.60(5).

[Filed 9/24/04, effective 11/17/04]

[Published 10/13/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

ARC 3729B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 17A.4, 476.1, 476.2, 476.27, 476.41, 478.1, 478.7, 478.18 to 478.20, 479.1, 479.5, 479.12, 479.17, 479B.1, 479B.5, and 479B.9, the Utilities Board (Board) gives notice that on September 22, 2004, the Board issued an order in Docket No.

RMU-04-6, In re: Revisions and Updates to Pipeline and Electric Line Rules [199 IAC Chapters 10, 11, 13, 15, 19, 20, and 25], "Order Adopting Amendments." The order adopted amendments, with certain revisions, to Chapters 10, 11, 13, 15, 19, 20, and 25 which were published under Notice of Intended Action in IAB Vol. XXVII, No. 4 (8/18/04) p. 270, as **ARC 3592B**.

The amendments update several references to technical standards and federal regulations, make minor revisions to reflect the Board's new rules regarding public utility crossings of railroad rights-of-way, correct inconsistencies in the current rules, and reflect new information or requirements, including one statutory change.

Written comments addressing the proposed amendments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), MidAmerican Energy Company (MidAmerican), and Interstate Power and Light Company (IPL). Consumer Advocate supported the rules as proposed. IPL suggested one change to the definition of electric transmission line in subrule 20.1(3). The Board adopted IPL's suggestion in Item 19.

MidAmerican made two suggestions for clarification, one of which correctly identifies the authors of one of the technical resources incorporated by reference in paragraph 25.2(5)"b." The Board made that correction in Item 22. MidAmerican's other comment related to proposed new language in paragraphs 10.2(1)"f" and 13.2(1)"f" regarding information to be submitted with a petition for renewal of a pipeline permit. The Board adopted MidAmerican's suggestion with some modification in Items 2 and 11.

A public hearing to present oral comments on the proposed rules was held on September 14, 2004. The Iowa Association of Electric Cooperatives (IAEC) appeared, expressed general support for the proposed rules, and indicated its support of IPL's written comments regarding the definition of electric transmission line. Consumer Advocate was present but did not offer further comments.

The proposed amendments, comments, and analysis in support of the proposed amendments and revisions can be found on the Board's Web site, www.state.ia.us/iub.

These amendments are intended to implement Iowa Code sections 17A.3, 17A.4, 476.1, 476.2, 476.27, 476.41, 478.1, 478.7, 478.18 to 478.20, 479.1, 479.5, 479.12, 479.17, 479B.1, 479B.5, and 479B.9.

These amendments will become effective on November 17, 2004.

The following amendments are adopted.

ITEM 1. Amend rule 199—10.1(479) by adding **new** subrule 10.1(4) as follows:

10.1(4) Railroad crossings. Where these rules call for the consent or other showing of right from a railroad for a railroad crossing, an affidavit filed by a petitioner which states that proper application for approval of railroad crossing has been made, that a one-time crossing fee has been paid as provided for in rule 199—42.3(476), and that 35 days have passed since mailing of the application and payment with no claim of special circumstance or objection from the railroad will be accepted as a showing of consent for the crossing.

ITEM 2. Amend paragraph **10.2(1)"f"** as follows:

f. Exhibit F. *This exhibit shall contain the following:*

(1) *A statement of the purpose of the project and a description of how the services rendered by the pipeline will promote the public convenience and necessity.*

(2) *A general statement covering each of the following topics: the nature of the lands, waters, and public or private*

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facilities to be crossed; the possible use of alternative routes; the relationship of the proposed pipeline to present and future land use and zoning ordinances; and the inconvenience or undue injury which may result to property owners as a result of the proposed project.

(3) *For an existing pipeline, the year of original construction and a description of any amendments or reportable changes since the permit or latest renewal permit was issued.*

ITEM 3. Amend subrule 10.12(1) as follows:

10.12(1) All pipelines, underground storage facilities, and equipment used in connection therewith shall be designed, constructed, operated, and maintained in accordance with the following standards:

a. 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through March 13, 2002 November 17, 2004.

b. 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline; Minimum Federal Safety Standards," as amended through March 13, 2002 November 17, 2004.

c. 49 CFR Part 199, "Drug and Alcohol Testing," as amended through March 13, 2002 November 17, 2004.

d. ASME B31.8 - 1999 2003, "Gas Transmission and Distribution Piping Systems."

e. 199 IAC 9, "Restoration of Agricultural Lands During and After Pipeline Construction."

f. *At railroad crossings, 199 IAC 42.7(476), "Engineering standards for pipelines."*

Conflicts between the standards established in paragraphs 10.12(1)"a" through "e" "f" or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

ITEM 4. Amend subrule 10.14(2) as follows:

10.14(2) Pipeline routes which include crossings of highway or railroad right-of-way at other than an approximate right angle, or longitudinally on such right-of-way, ~~will not be granted a pipeline permit by the board shall not be constructed unless a showing of consent by the appropriate authority is has been provided by the petitioner (ref: 199—10.2(1)"e").~~ *as required in paragraph 10.2(1)"e."*

ITEM 5. Amend rule 199—10.16(479) as follows:

199—10.16(479) When a permit is required. A pipeline permit shall be required for any pipeline which will be operated at a pressure of *over* 150 pounds per square inch gage ~~or more~~, or which, regardless of operating pressure, is a transmission line as defined in ASME B31.8 or 49 CFR Part 192. Questions on whether a pipeline requires a permit are to be resolved by the board.

ITEM 6. Amend rule 199—10.17(479) as follows:

199—10.17(479) Accidents and incidents. Any pipeline incident or accident which is reportable to the U.S. Department of Transportation under 49 CFR Part 191 as amended through March 13, 2002 November 17, 2004, shall also be reported to the board, except that the minimum economic threshold of damage required for reporting to the board is \$15,000. Duplicate copies of any written accident reports and safety-related condition reports submitted to the U.S. Department of Transportation shall be provided to the board.

ITEM 7. Amend rule 199—11.1(478) by adding **new** subrule 11.1(8) as follows:

11.1(8) Railroad crossings. Where a petition for temporary construction permit is made as provided for in Iowa Code section 478.31, an affidavit filed by the petitioner which states that proper application for approval of railroad crossing has been made, that a one-time crossing fee has been paid as provided for in rule 199—42.3(476) and that 35 days have passed since mailing of the application and payment with no claim of special circumstance or objection from the railroad will be accepted as a showing of railroad approval for the crossing.

ITEM 8. Amend subparagraph **11.2(1)"d"(2)** as follows:

(2) If the route or any portion thereof is not near and parallel to *roads*, railroad right-of-way, or along division lines of the lands, according to government surveys, a showing of why such parallel routing is not practicable or reasonable.

ITEM 9. Amend subrule 11.3(1) as follows:

11.3(1) Forms. The following forms are available from the utilities board, and the appropriate form shall be used when filing any petition. An original and ~~one copy~~ *three copies* of the petition and exhibits shall be filed.

a. to f. No change.

ITEM 10. Amend rule 199—13.1(479B) by adding **new** subrule 13.1(4) as follows:

13.1(4) Railroad crossings. Where these rules call for the consent or other showing of right from a railroad for a railroad crossing, an affidavit filed by a petitioner which states that proper application for approval of railroad crossing has been made, that a one-time crossing fee has been paid as provided for in rule 199—42.3(476) and that 35 days have passed since mailing of the application and payment with no claim of special circumstance or objection from the railroad will be accepted as a showing of consent for the crossing.

ITEM 11. Amend paragraph **13.2(1)"f"** as follows:

f. Exhibit F. *This exhibit shall contain the following information:*

(1) *A statement of the purpose of the project and a description of how the services rendered by the pipeline will promote the public convenience and necessity.*

(2) A general statement covering each of the following topics: the nature of the lands, waters, and public or private facilities to be crossed; the possible use of alternative routes; the relationship of the proposed pipeline to present and future land use and zoning ordinances; and the inconvenience or undue injury which may result to property owners as a result of the proposed project.

(3) *For an existing pipeline, the year of original construction and a description of any amendments or reportable changes since the permit or latest renewal permit was issued.*

ITEM 12. Amend subrule 13.14(2) as follows:

13.14(2) Pipeline routes which include crossings of highway or railroad right-of-way at other than an approximate right angle, or longitudinally on the right-of-way, ~~will not be granted a pipeline permit by the board shall not be constructed unless a showing of consent by the appropriate authority is has been provided by the petitioner as required in paragraph "e" of subrule 13.2(1)"e."~~

ITEM 13. Amend subrule **15.10(1)** by adding **new** paragraph **"h"** as follows:

h. Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE 1547-2003.

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ITEM 14. Amend paragraph **19.2(5)“g”** as follows:

g. Reports to federal agencies. Copies of reports submitted pursuant to 49 CFR Part 191 as amended through ~~February 1, 2003~~ *November 17, 2004*, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” shall be filed with the board. Utilities operating in *other* states ~~besides Iowa~~ shall provide to the board data for Iowa only.

ITEM 15. Amend subrule 19.5(2) as follows:

19.5(2) Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” as amended through ~~February 1, 2003~~ *November 17, 2004*.

(2) 49 CFR Part 192, “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” as amended through ~~February 1, 2003~~ *November 17, 2004*.

(3) 49 CFR Part 193, “Liquefied Natural Gas Facilities: Federal Safety Standards,” as amended through ~~February 1, 2003~~ *November 17, 2004*.

(4) 49 CFR Part 199, “Drug and Alcohol Testing,” as amended through ~~February 1, 2003~~ *November 17, 2004*.

(5) ASME B31.8 1999 - 2003, “Gas Transmission and Distribution Piping Systems.”

(6) ANSI/NFPA No. 59-2001 ~~2004~~, “Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants.”

(7) *At railroad crossings, 199 IAC 42.7(476), “Engineering standards for pipelines.”*

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54-1999 2002, “National Fuel Gas Code.”

(2) ANSI A225/NFPA 501A-2000 2003, “Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities.”

ITEM 16. Amend subrule 19.6(3) as follows:

19.6(3) Accepted good practice. The following publications are considered to be representative of accepted good practice in matters of metering and meter testing:

a. American National Standard for Gas Displacement Meters (500 Cubic Feet Per Hour Capacity and Under), ANSI B109.1-2000.

b. American National Standard for Diaphragm Type Gas Displacement Meters (Over 500 Cubic Feet Per Hour Capacity), ANSI B109.2-2000.

c. American National Standard for Rotary Type Gas Displacement Meters, ANSI B109.3-2000.

d. Measurement of Gas Flow by Turbine Meters, ANSI/ASME MFC-4M-1997 1986 (*R1997*).

e. Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, ~~ANSI/API 2530-1994~~ *API MPMS Chapter 14.3, Parts 1-4*.

ITEM 17. Amend subrule 19.8(3) as follows:

19.8(3) Turning on gas. Each utility upon the installation of a meter and turning on gas or the act of turning on gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer’s piping or appliances are not safe for gas turn on (Ref: Sec. 4.2 and Appendix D, ANSI Z223.1/NFPA 54-1999 2002).

ITEM 18. Amend rule 199—19.8(476) by adding **new** subrule 19.8(6) as follows:

19.8(6) Burial near electric lines. Each pipeline shall be installed with at least 12 inches of clearance from buried electrical conductors. If this clearance cannot be maintained, protection from damage or introduction of current from an electrical fault shall be provided by other means.

ITEM 19. Amend subrule **20.1(3)**, definition of “transmission line,” as follows:

“Transmission line” means any single or multiphase electric power line operating at nominal voltages *at or* in excess of either ~~26,000~~ *69,000* volts between ungrounded conductors or ~~15,000~~ *40,000* volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

ITEM 20. Amend subrule **20.5(2)** by adding **new** paragraph **“j”** as follows:

j. At railroad crossings, 199 IAC 42.6(476), “Engineering standards for electric and communications lines.”

ITEM 21. Amend subrule **25.2(2)** by adding **new** paragraph **“g”** as follows:

g. Lines crossing railroad tracks shall comply with the additional requirements of 199 IAC 42.6(476), “Engineering standards for electric and communications lines.”

ITEM 22. Amend paragraph **25.2(5)“b”** as follows:

b. “The Lineman’s and Cableman’s Handbook,” ~~Ninth Tenth Edition; Kurtz, Edwin B. and Shoemaker, Thomas M. and Mack, James E.~~ New York, McGraw-Hill Book Co., is adopted as a recommended guideline to implement the “National Electrical Safety Code” or “National Electrical Code,” and for developing the inspection and maintenance plans required by 199 IAC 25.3(476,478).

ITEM 23. Amend subrule 25.3(5) as follows:

25.3(5) Guidelines. Applicable portions of Rural Electrification Utilities Service (RUS) Bulletins ~~161-3, 1730-1, 1730B-121, and 165-4~~ *1724E-300* and “The Lineman’s and Cableman’s Handbook” are suggested as guidelines for the development and implementation of an inspection plan. ANSI A300 (Part 1)-2001, “Pruning,” and Section 35 of “The Lineman’s and Cableman’s Handbook” are suggested as guides for tree trimming practices.

[Filed 9/24/04, effective 11/17/04]

[Published 10/13/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/13/04.

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